TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 178.

JESUS M. BALZAC, APPELLANT,

vs.

THE PEOPLE OF PORTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

FILED DECEMBER 1, 1902.

(28,000)

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1 In the Name and by the Authority of the People of Porto Rico.

UNITED STATES OF AMERICA,
The President of the United States, ss:

In the District Court of Arecibo, P. R., May 31, 1918.

THE PEOPLE OF PORTO RICO

vs.

JESÚS M. BALZAC.

The prosecuting attorney files this information against Jesús M. Balzac for libel (misdemeanor) as provided in sections 243 and 244 of the Penal Code, committed as follows:

In Arecibo, Porto Rico, of the Judicial District of the same name, the defendant Jesús M. Balzac, editor and manager of the daily paper "El Baluarte", with an office for its publication on Lealtad and Puente de Hierro streets, No. 7, Arecibo, Porto Rico, which is published and circulates in said Judicial District of Arecibo, unlawfully, wilfully and maliciously, published and caused to be composed, edited and published, in No. 69 of said newspaper "El Baluarte", prior to the filing of this information, or on April 16, 1918, a defamatory, false, scandalous and malicious libel in the form of an article published under the heading "Yager", containing false, scandalous, malicious and defamatory matters, words and charges against the governor of Porto Rico, Arthur Yager, the said libel reading as follows:

Like an abortion of hell expelled by the fiery billows of infamy this prototype of ignominy came among us as the diabolical incarnation of despotism. For many years he has been our governor and during those years our tyrant. How sharp is the arrow that pierces our hearts when we contemplate our people subject to
2 the yoke of an oppression which can only be explained by the egotism of false patriots and which has for its only foundation the unenlightened strength of controlled power. Hunt ruled amidst the tempests of passion of a sordid people. He permitted abuses and sanctioned crime, but respected the right. This (governor) has done more. He has Borinquen sunk in the slough of social slavery. He has put his foot upon the necks of the people and makes them swallow the liberticidal slime of the slough. The former was a separatist. The latter is a dictator. Those who remember the mournful happenings of 1904; those who keep alive in their minds a remembrance of the sad political tempests of the country; those who were flagellated by the hosts of Hunt, forget pains of past outrages and become amazed at con-

templating the present barbarities, just as the recollection of night phantoms is forgotten by the timorous at dawn. Who does not view with horror the exploits of this man whose authority is an insult and a dishonour to democracy and whose is the hand that tears the pages of the Constitution and impiously rends the white robe of Justice, which is as beautiful as Diana under the free shadow of the American flag, and as unhappy as Niobe under the authority of this American Kaiser.

We are men of honor and by God's grace do not have to remain silent before the cruel mockery of this fiendish bucaneer, a trampler upon the right a caluminator of the people, an accomplice of Child, Latimer, Carpenter, Maxwell and Bird, and a protector of that innumerable rabble of social xylophaga who feed upon the blood of this people. The great American nation should feel satisfied with our campaign of moral sanitation against this
3 handful of dung thrown at us by Wilson from the Capitol which is a fatal discredit to the national honor. That wretched, abominable and funereal figure; that man who is despised by the people, is the extinguisher of every luminous idea which expands and shines in the niveous hands of this virgin of the Carribean Sea; he is the odious grave-digger of the people, the assassin of democracy and the people's persecutor; the insensate hangman of the yankee sentiment and of the love that this unfortunate people feels towards that Nation. He is an attempt at national dignity, a sarcasm that as a shower of daggers fall sharply upon the brow of American democracy; an unbearable vexation to Saxon moral liberalism * * *. All tyrants had their crowns. I shall present one to this hyena studded with maledictions. It is an aureola that makes him detestable. It is the repugnant aureola of hypocrisy. Certainly this is a hypocrit-al governor. He acts contrary to his words. While he says that he will uphold the rights of the strikers he imprisons the leaders and ravages the country people. That unfortunate man of a feeble criterion to be a governor will be a stain upon history * * *—The Knight-errant.

All of which is tending to impeach the honesty, integrity, virtue or reputation, of the Hon. Arthur Yager, thereby exposing him to public hatred, contempt or ridicule.

This fact is contrary to the law for such cases provided and against the peace and dignity of the People of Porto Rico.

(Sd.) JOSÉ R. APONTE,
District Prosecutiing Attorney.

4 The foregoing information is supported by the testimony of witnesses examined by me under oath and I solemnly believe there is just cause to present it in the court.

(Sd.) JOSÉ R. APONTE,
District Prosecuting Attorney.

Sworn to and subscribed before me this 31st day of May, 1918.

(Sd.) MANUEL L. CORBET,
Clerk of the District Court of Arecibo, P. R.

Session of May 31st, 1918, 3 p. m.

Case No. 880.

THE PEOPLE OF PORTO RICO

vs.

JESÚS M. BALZAC.

Charge: Libel.

The defendant appeared in open court and after having been informed as provided in section 143 of the Code of Criminal Procedure, stated that his name was Jesús M. Balzac. The district attorney read the information and handed a copy of it to the said defendant, who pleaded not guilty.

UNITED STATES OF AMERICA,
The President of the United States, ss:

In the District Court for the Judicial District of Arecibo, P. R.

Case No. 880.

THE PEOPLE OF PORTO RICO

vs.

JESÚS M. BALZAC.

Charge: Libel.

5 *Judgment.*

In view of the evidence examined during the session held on the 29th of July, 1918, the court finds the defendant, Jesús M. Balzac, guilty of the crime of libel as charged and sentences him to imprisonment for five months in the District Jail and the payment of the costs of this prosecution.

I, Manuel L. Corbet, Clerk of the District Court for the Judicial District of Arecibo, Porto Rico, do hereby certify that the foregoing is a true and exact copy of the judgment rendered by the aforesaid court in the above-entitled criminal action, which was tried before the said court during the session held on the 29th of July, 1918, as appears from the minutes of this court of the session held on the said date. And for its inclusion in the corresponding record, I issue this copy under my signature and the official seal of the court in the city of Arecibo, this 31st day of July, 1919.

(Sd.) MANUEL L. CORBET,
Clerk District Court.

In the District Court for the Judicial District of Arecibo, P. R.

Case No. 880.

THE PEOPLE OF PORTO RICO

vs.

JESÚS M. BALZAC.

To the Clerk and District Attorney of the District Court of Arecibo:

You are hereby notified that not being satisfied with the judgment rendered by the court on this date and in this case, I appeal to the Supreme Court of Porto Rico.

Arecibo, P. R., July 31st, 1918.

(Sd.) J. M. BALZAC.

6 Received copy this 31st day of July, 1918.

(Sd.) JOSÉ R. APONTE,
District Prosecuting Attorney.

Filed in my office this 31st day of July, 1918.

(Sd.) MANUEL L. CORBET,
Clerk.

In the District Court for the Judicial District of Arecibo, P. R.

Case No. 880.

THE PEOPLE OF PORTO RICO

vs.

JESÚS M. BALZAC.

Charge: Libel.

Statement of the Case.

Be is remembered that on July 29, 1918, in the District Court of Arecibo, Porto Rico, present Hon. Enrique Lloreda Casabo, judge of said court, the criminal prosecution brought by The People of Porto Rico against Jesús M. Balzac for the crime of libel as defined in sections 243 and 244 of the Penal Code of Porto Rico was tried orally and publicly, The People of Porto Rico appearing by José R. Aponte, district attorney of Arecibo, and the defendant being present in person and represented by his attorney, José de Jesús Tizol.

The parties having been asked by the court if they were ready for trial, counsel for the defendant requested that the marshal of the court be called to state whether certain witnesses for the defense had been subpœnæd in accordance with a præcipe previously filed. The marshal reported that the governor's secretary was at Jájome,

that Mr. Shanton and Mr. Robert are out in the island for
7 which reason he has been unable to subpœna them; that the marshal of San Juan reported that he had not had time to subpœna the Commissioner of the Interior.

Attorney Tizol informed the court that there were other necessary witnesses for the defense who had not appeared, and asked leave of the court to file a written motion regarding the absence of the witnesses and for a continuance. At the same time he moved orally that the defendant be allowed a trial by jury. The district attorney objected stating that in a libel case against Adorno the Supreme Court had clearly decided that the District Court had jurisdiction in misdemeanor cases and that it is plainly provided in the Penal Code that a trial by jury is not required in misdemeanor cases.

The court overruled the motion on the ground that no right is conferred to a jury trial in these cases under our criminal procedure.

Attorney Tizol excepted to the ruling of the court arguing that such proceedings were unconstitutional in not conferring a right which is substantial to every American citizen and the court stated that even in the supposition that the law granted trials by juries in misdemeanor cases, the defendant should have asked for it at the time of his arraingment and not having done so it should be understood that he waived that right as decided by the Supreme Court in the case of Ex parte Torres, 4 P. R. R., 146. The court added that a trial by jury can only be granted in a felony case and that privilege has not been extended to prosecutions for libel or any other misdemeanor case. The People vs. Bird, 5 P. R. R. 183. The court adjourned its session for one hour in order that the defendant's counsel may prepare and file his written motion for continuance. The session having been reopened attorney Tizol filed a written motion for a continuance and the court ordered that it be made a part of the record so that a copy thereof might be included in the transcript of the record.

8 The district attorney opposed the continuance requested by the defendant Balzac for the reason that the testimony which some of the witnesses would give of facts referring to the governor of Porto Rico can be given only by the Chief of the Government in accord with the Chief of Police because its context clearly shows that the acts were performed as measures of public policy and bear no relation to the crime of libel with which defendant Jesús M. Balzac is charged. Regarding the other testimony of Epifanio Fiz, Ramón Barrios, Santiago Iglesias and Henry W. Dooley, it is the personal opinions of these witnesses which have no weight under a plea of justification of a libel because the plea should be directed specially to the defamatory matter and should be supported by facts showing that the libelous matter was published by the person charged with it and cannot be proved by a public rumor or hearsay. In support of this theory he cited 25 Cyc. 414, et seq., and Newell on Slander and Libel, 658, et seq. He further stated that this case has been continued four times prior to this date with the knowledge of the defendant's attorney who asked for the con-

tinuance and has had sufficient time to give the names of the witnesses to the court so that they might have been subpœnaed in due time.

Attorney Tizol suggested that the motion for continuance was based on the following reasons: First, that the libel or defamatory matter is a privileged communication; second, that no reference whatever is made in any part of the article as to the personal reputation or character of governor Yager; third, that the purpose of every libel being to attack the reputation of the innocent person against whom it is directed, and the personal reputation of the official as governor not having been attacked in any manner, he intends to prove that the reputation of the governor could not have been affected by Balzac because the governor had already been politically attacked by all of the political parties in Porto Rico.

9 The court suspended the hearing until two o'clock in the afternoon when the case was again called, the following statement having been made by the judge: the court will now rule on the motion for continuance. Whereas, at the call of this case for trial the defendant by his attorney filed a verified motion for a continuance to the next term, which motion was opposed by the district attorney and argued by both parties; Whereas, the trial of this case was set in open court at the reading of the criminal docket on June 1st, 1918, for the 27th of the said month, and on the 26th, on motion of counsel for the defendant alleging that he was busy with other criminal cases before the District Court of San Juan, it was continued and again set for the 29th, on which date it was also continued for a similar reason and again set for July 10th, when it was again continued on account of the illness of the defendant, on whose motion was newly set for the 26th of this month, the said setting having been, on motion of counsel for defendant, continued to the 29th; Whereas, notwithstanding the time elapsed and those four settings and continuances the defendant has not asked at any time that the witnesses referred to in the motion for continuance be subpœnaed and no showing was made of why the said witnesses were not previously subpœnaed. Whereas, subpœnas for the said witnesses were requested by telegraph on the 25th at noon, or only two days before the trial, said days being Saturday and Sunday, and therefore due diligence has not been shown: Whereas, this court will close its regular term within two days and therefore the case will go over for three months more, as the next criminal term will be held in November, and that will be contrary to the rule of procedure with respect to a speedy trial as provided for in paragraph 1 of section 11 of the Code of Criminal Procedure: Whereas, the said motion does not show the materiality of the evidence referred to therein, the same referring to letters and

10 communications which in themselves constitute hearsay evidence; Whereas, it has not been alleged that the facts to which that evidence would refer cannot be proven by some other witnesses. Therefore, in view of the case of The People v. Gallart, 11 P. R. R. 361, the court overrules the motion of the defendant and orders the case to trial.

Attorney Tizol excepted to the ruling of the court.

The information was read and attorney Tizol, by leave of the court, filed a demurrer on the ground that the information does not charge the crime defined by sections 243 and 244 of the Penal Code, inasmuch as it lacks the requirements pointed out in the case of The People of Porto Rico vs. García, decided by the Supreme Court. The district attorney opposed the demurrer on the ground that it was not in legal form and because it seems to be the theory of the attorney that the information should contain colloquiums or innuendos, that is an information as the one which was presented in the case of People vs. Adorno, but according to section 87 of the Code of Criminal Procedure it is not necessary that informations contain such colloquiums or innuendos as was held by the Supreme Court in the case of People vs. Aybar.

The court overruled the demurrer and attorney Tizol excepted, stating that the defendant pleaded not guilty to the information and alleged as a defense that the supposed libelous publication is justifiable because it refers to a public official and does not mention the commission of a public crime. Thereupon the prosecuting attorney introduced his evidence.

Having been duly sworn, RAMÓN ALFONSO RIVERA testified that he is the postmaster of Arecibo and was such postmaster in the month of April of said year. That he knows a newspaper which is edited and published in Arecibo and called "El Baluarte" that circulates by mail and which paper he receives personally. That in the month of April the editor of said newspaper was Jesús
11 M. Balzac in whose name was the privilege for the circulation of the newpaper; he recognizes the said gentleman and adds he has seen the said newpaper circulating by mail also identifying No. 79 of said publication in which it is an article entitled 'Yager'; he has seen the said newspaper circulating by mail also identifying delivered to the prosecuting attorney of Arecibo that several other numbers also circulated by mail although he cannot identify them with certainty; that usually a weight of four or five pounds is mailed, the number of copies being about eighty; that the day on which copy 69 was published the number of copies mailed was about eighty; that he called the attention of the prosecuting attorney as to the article entitled 'Yager' because the witness thinks it is libelous and defamatory on the Governor of Porto Rico after reading it. The witness considers the article libelous upon Governor Yager when it says 'like an abortion of hell expelled by the fiery billows of infamy this prototype of ignominy came among us as the diabolical incarnation of despotism. The witness considers the article entitled Yager libelous upon the governor from beginning to end. It says: For many years he has been our governor and during those years our tyrant. In the opinion of the witness the following language is injurious upon the governor: 'we contemplate our people subject to the yoke of an oppression; Hunt permitted abuses and sanctioned crime, but respected the right; this governor has done more; he has Borinquen sunk in the slough of social slavery; he has put his foot

upon the necks of the people and makes them swallow the liberticidal slime of the slough.' He also considers injurious the following words: 'the great American Nation should feel satisfied with our campaign of moral sanitation against this handful of dung thrown at us by Wilson from the Capitol which is fatal discredit to the national honor. That wretched, abominable and funereal figure; that man who is despised by the people is the extinguisher of every luminous idea which expands and shines in the
12 niveous hands of this virgin of the Carribean Sea; he is the odious grave-digger of the people, the assas-in of democracy, the people's persecutor and the insensate hangman of the yankee sentiment and of the love that this unfortunate people feels toward that Nation. He is an attempt at national dignity, a sarcasm that as a shower of daggers fall sharply upon the brow of American democracy. All tyrants had their crowns. I shall present one to this hyena studded with maledictions. It is an aureola that makes him detestable. It is the repugnant aureola of hypocrisy. Certainly this is a hypocrit-al governor. He acts contrary to his words. While he says that he will uphold the rights of the strikers he imprisons the leaders and ravages the country people. That unfortunate man of a feeble criterion to be a governor will be a stain upon history

Witness says he knows where the newspaper "El Baluarte" is published; that it is published on 'Puente de Hierro Street,' at Arecibo; that the newspaper in question was distributed on that day in the town of Arecibo; that Mr. Balzac is the editor of said publication (pointing at him); that a boy took it to the postoffice by direction of Balzac, the editor, who has a privilege for its circulation as second class matter. No. 69 of "El Baluarte," of April 16, 1918, was introduced in evidence by the prosecuting attorney, attorney Tizol having objected to its admission on the ground that no evidence had been presented showing that the defendant was the editor of said newspaper. The prosecuting attorney stated that the publication itself showed that J. M. Balzac was the editor and manager. The judge admitted it in evidence attorney Tizol having excepted to said ruling. In answer to questions of the defense the witness said he was not prepared to explain what he understood by 'a tyrant,' also saying that a tyrant is any person who tyrannizes another. He understands by a dictator a governor of any country who declares himself a dictator of such country by his own authority and not by any sanction of law.
That a country is under social slavery when it is subject to it
13 and a ruler wants to submit it to slavery. The witness thinks that the statements contained in the article are strong and libelous meaning as they do that Governor Yager maintains the country in a social slavery. That the words he considers most libelous among those he has read are the words 'abominable' and 'funereal,' and 'that man who is despised by the people'; that the newspaper bears date of August 16, 1918; that witness lives in Arecibo and has no recollection of anything unusual occurring on that date; that he does not know whether the article is due to any special or definite political or economical campaign; that he does not remember if there was any strike at that time.

JOSÉ ADORNO was sworn and stated that his name is as aforesaid, is a resident of Arecibo and its municipal secretary; that formerly he was a journalist for a period of 14 or 16 years. He knows the newspaper called "El Baluarte" which is published in Arecibo as well as its editor, J. M. Balzac, by sight. He read in it an article headed 'Yager' about the month of April and saw while reading it that it referred to Governor Yager which article also bears this name. He considered the article libelous and tending to impeach the reputation of the Governor of Porto Rico. That the following are the words he deemed defamatory, libelous or injurious: 'who does not view with horror the exploits of this man whose authority is an insult and a dishonour to democracy and whose is the hand that tears the pages of the Constitution and impiously rends the white robe of Justice, which is as beautiful as Diana under the free shadow of the American flag, and as unhappy as Nioba under the authority of this American Kaiser! He also considers as libelous the following expression: 'the great American nation should feel satisfied with our campaign of moral sanitation against this handful of dung thrown at us by Wilson from the Capitol which is a fatal discredit to the national honor.

That wretched, abominable, and funereal figure; that man
14 who is despised by the people, is the extinguisher of every luminous idea which expands and shines in the niveous hands of this virgin of the Carribean Sea; he is the odious grave-digger of the people ,the assas-in of democracy, the people's persecutor and the insensate hangman of the yankee sentiment and of the love that this unfortunate people feels towards that Nation. He is an attempt at national dignity, a sarcarsm that as a shower of daggers fall sharply upon the brow of American democracy; an unbearable vexation to Saxon moral liberalism.' He also deems libelous and injurious this other statement contained in the article: 'it is the repugnant aureola of hypocrisy. Certainly this is a hypocrit-al governor. He acts contrary to his words. While he says that he will uphold the rights of the strikers he imprisons the leaders and ravages the country people. That unfortunate man of a feeble criterion to be a governor will be a stain upon history.'

He read the article in Arecibo and thought from its reading that it referred to the Governor of Porto Rico, Mr. Yager, which was also apparent from the article. The witness says that answering questions of the prosecuting attorney he stated that he considered the article libelous to a certain extent because the criticism therein made is not to a public official but to Doctor Yager as a private individual and that it refers to him personally when it says 'who does not view with horror the exploits of this man whose authority is * * *' He deems the expression 'grave-digger of the people' as an opinion of the writer as the people as a whole cannot be buried by a ruler. That the statement 'assas-in of democracy' may be understood as an abuse of the people's rights. Replying to questions of the prosecuting attorney witness says that the first paragraph of the article bears some relation to his public life and refers to the governor; that he understood from the reading of the last part of the said article when it says that 'he imprisons the leaders and ravages the country

people' as meaning a man who did not keep his words, a man
15 without consideration who imprisoned and ravaged the country people, which meant that he was the cause of victims in the country people; that he incited them to go to strike, imprisoned them and then authorized the police force to kill them. That that was what he understood.

RAMÓN SEIJO, having been duly sworn, testified as follows: that his name is Ramón Seijo, is a resident of Arecibo, a minor surgeon, having been formerly a journalist for a period of eight years. He knows a newspaper published in Arecibo and called "El Baluarte;" he reads it, is a subscriber thereof and pays for it since it was first established. He read an article enti-led 'Yager' in the newspaper which is now presented to him that refers to Governor Yager as shown by its heading and in his opinion it is defamatory upon the Governor of Porto Rico, the following being among the paragraphs that witness thinks most libelous, to wit: 'The great American nation should feel satisfied with our campaign of moral sanitation against this handful of dung thrown at us by Wilson from the Capitol which is a fatal discredit to the national honor. That wretched, abominable and funereal figure; that man who is despised by the people, is the extinguisher of every luminous idea which expands and shines in the niveous hands of this virgin of the Carribean Sea; he is the odious grave-digger of the people, the assas-in of democracy and the people's persecutor; the insensate hangman of the yankee sentiment and of the love that this unfortunate people feels towards that Nation.' That the following paragraph is also injurious on governor Yager, to wit: 'While he says that he will uphold the rights of the strikers he imprisons the leaders and ravages the country people. That unfortunate man of a feeble criterion to be a governor will be a stain upon history.' That Mr. Balzac is the editor of the newspaper "El Baluarte;" that he read that newspaper at home in Arecibo.

Replying to questions of the defense, the witness stated: that the paragraph in the article 'like an abortion of hell expelled by
16 the fiery billows of infamy this prototype of ignominy came among us as the diabolical incarnation of despotism; for many years he has been our governor and during those years our tyrant, clearly speaks of Mr. Yager and refers to the governor although the article is headed 'Yager.'

JOSÉ COLL Y VIDAL, having been duly sworn, stated that his name is José Coll y Vidal, a resident of San Juan, a journalist and editor of the newspaper "La Democracia." He read the article in the morning from the reading of which it is seen that it is directed to Yager, witness thinking that the article contains an opinion somewhat exaggerated of the acts of the governor, utterances that may — considered as vexatious, phrases of a doubtful meaning which in connection with the newspaper campaign may be regarded as a bad propaganda, not only against the governor but even upon him as private individual as shown by the said article when it says 'while

he says that he will uphold the rights of the strikers he imprisons the leaders and ravages the country people.' That utterance is very strong. Under the circumstances these words may be considered as a figurative statement, but taking them literally and considering that in those days some agitators of strikes were imprisoned, and in view also that some workmen were wounded in some riots it might be understood that it was the governor who ordered them to be killed.

Replying to questions of the defense the witness stated, that the following is the paragraph of the article where it is said that the governor ordered them to be killed: 'while he says that he will uphold the rights of the strikers he imprisons the leaders and ravages the country people.' Considering the nature of the article which bears the name of the person, and in view of the fact that in those days some of the strikers were imprisoned and wounded in some of the riots; the article being headed 'Yager' and saying 'while he says that — will uphold the rights of the strikers he imprisons the 17 leaders and ravages the country people' it may be understood that he, (the governor), orders the country people to be killed.

Witness for the Defense.

PRUDENCIO RIVERA was duly sworn and in answer to questions of attorney Tizol testified that his name is Prudencio Rivera, is a resident of San Juan, organizer of the National Union of Cigar-makers of Porto Rico and vice-president of the Executive Committee of the Free Federation of Laborers; that in April of this year he lived at San Juan and at the time when the article headed 'Yager' was written there was a strike. He knows Mr. Balzac and took part in the strike movement explaining what he did. A meeting took place in Bayamón on September 1st, when the Second Agricultural Assembly was held for the purpose of carrying into execution measures which had been adopted at the former assembly, among them being one adopted at Bayamón for demanding a minimum agricultural wage of $1.50 and 75 cents for women. The Executive Committee of which witness is a member was instructed to demand the same from the Association of Sugar Producers, which they did, but received no answer. The same thing was done in November with the same result. Instructions were given to the Unions that they ask aid from the American Federation of Labor and when we had made known the indifference with which the matter was considered by those who should have considered it carefully we appealed to governor Yager and asked him to call a meeting of the planters. He promised to do so but did not, so we appealed to Mr. Gompers, President of the American Federation of Labor. February 10th was set for a meeting of the Executive Committee of the American Federation of Labor to pass on the petition, but no such decision was reached; President Gompers sent us a copy of a citation for the interview and we met. The Executive Committee met and resolved to call on the governor about the matter and he answered that 'apparently there was no general strike and he deemed it unnecessary

to issue the call.' Notwithstanding the statements made by
18 the governor there was a strike since September at some places and while the strike was going on was when the article in the 'Baluarte' appeared. He took part in the interview with the governor, the last one being held on the twenty ninth of March. He knows of the protests made on account of the suspension of certain meetings and parades, but was not at the meeting which was suspended. He received instructions from the Executive Committee to proceed to Ponce to arouse the district and on the day after his arrival there, in the first fortnight of April, he went to the telegraph office where he delivered a telegram he wanted to send to inform his office of his arrival and of having met a number of laborers during the night and that a meeting had been held on 'Mendez Vigo' street, also stating that the police had not disturbed the order of the meeting; that he was informed by the telegraph operator that the telegram could not be sent because it contained a criticism of the police force and asked that the money should be refunded to him which was done together with a note from the Chief of the Bureau. The newspapers which then took part in the campaign were 'Justicia,' 'El Baluarte,' 'Yo Acuso,' 'Conciencia Popular,' and some other popular newspaper of the workmen.

In answer to questions by the prosecuting attorney he said that he could not give the exact date when the strike commenced, but that the first reports came from Humacao in December and the strike had not terminated yet. That the agricultural strike we declared was terminated by the Government and not by us. At present we are not on strike.

Judge: Yes or no; why did you say 'yes'?

Witness: We are not on a strike.

Pros. Atty.: You have stated that a telegram was returned to you in Ponce?

Witness: Yes, sir. I know personally who issued the order. I saw it after it was shown to me by Palacios in a book containing Government's Circulars, from the Department of Interior,
19 Mr. Enright being Commissioner of the Interior.

The 'Baluarte' was a newspaper which made propaganda in favor of the strike; he had relations with Balzac, but does not know whether he was the editor of 'Baluarte' at that time.

Pros. Atty.: I move the court to order that the whole testimony be stricken out, it being immaterial and making no reference to the defendant.

Atty. Tizol: I object. I called this witness to prove that there was a strike at that time.

Judge: I really think that a link is lacking to connect this testimony with the defendant, but I also think that it is unnecessary to strike it out because it may be considered pertinent.

The evidence of the defense is exhausted.

The foregoing is the Statement of the Case and Bill of Exceptions which is hereby approved by the Judge of the District Court of Arecibo.

I, Enrique Lloreda Casabo, Judge of the District Court of Arecibo, Porto Rico, do hereby certify that the foregoing Statement of the Case contains all the evidence examined at the trial of criminal action No. 880, prosecuted by The People of Porto Rico against Jesús M. Balzac, for a crime of libel, as well as all the exceptions taken at said trial; the said statement having been drafted by the court after considering the statements made by the prosecuting attorney who was then the only party who appeared on October 25, 1918, at the hearing required by law; therefore I approve the same as it was presented and it is hereby ordered that as approved it forms a part of the Judgment-Roll.

Given under my hand and the seal of this court in the city of Arecibo, this 26th day of May, 1919.

(Sd.) ENRIQUE LLOREDA,
Judge of the District Court of Arecibo, P. R.

20 In the District Court for the Judicial District of Arecibo, P. R.

THE PEOPLE OF PORTO RICO

vs.

JESÚS M. BALZAC.

Libel.

Motion for Continuance.

Now comes the defendant by his attorney José de Jesús Tizol, and respectfully shows:

1st. That he was summoned to appear today, July 29, 1918, in this court for the trial of the case of People of Porto Rico vs. Jesús M. Balzac.

2nd. That in due time, about the 25th instant, he sent a telegram to the Judge of this court praying for an order directed to the proper official for subpœnaing the following witnesses:

Pedro Rodriguez, Governor's Private Secretary;
Geo. Shanton, Chief of Insular Police;
José Muñoz Rivera, Secretary of the Insular Senate;
Guillermo Esteves, Commissioner of the Interior, and
Henry W. Dooley.

3rd. That according to the report of the marshal the said witnesses were not subpœnaed at San Juan, the place of their residence as duly given by this defense.

4th. That for that reason they were not present when the trial was commenced.

5th. The defense beli-ves that the testimony which the said witnesses would give at the trial would be material to the case and not cumulative; that due diligence having been exercised on his part to obtain their testimony he believes that their presence at the trial is absolutely necessary and he is sure that they would testify as follows:

PEDRO RODRIGUEZ: that on January 30, 1918, at the re-
21 quest of Santiago Iglesias he wrote him a letter in the following terms:

SIR:

In accordance with your request I have been instructed by the governor to furnish you with a copy of his telegram to the mayor of Guayama, as follows:

San Juan, Porto Rico, January 29, 1918.

Genaro Cautiño, Mayor of Guayama, Porto Rico:

In view of the present condition of war and of the decision of the Department of Labor of the United States to send to Porto Rico a mediator for conciliation in this matter, no aid should be given to any strike or movement at present and no permit should be granted for the purposes mentioned in your telegram.

ARTHUR YAGER.

Respectfully,
(Sd.) P. S. RODRIGUEZ,
Governor's Secretary.

GEO. SHANTON: that the following was contained in a circular sent to Andrés Arellano on March 9, 1918, and signed by Geo. Shanton, Chief of the Insular Police: That in regard to parades of strikers on public roads and in view of the many crimes, no permit should be given to strikers to use national or labor flags, or any flag of any kind, or musical instruments, that may infiltrate enthusiasm in the strikers.

That on February 1st. the following communication was sent to the District Chief of Humacao, to wit: Notify the mayor, by order of the governor, not to permit parades by agitators of strikers in view of the present condition of war. The Police will not permit public meetings or parades on public roads, they only being entitled to enter into peaceful strikes without any parades.

We think he would also testify that on several occasions the police men under his orders have been furnished to protect the transportation of strike-breakers to the several centrals where strikes exist.

GUILLERMO ESTEVES: would testify that as Commissioner
22 of Interior he gave instructions in compliance with orders from the Governor of Porto Rico to the effect that certain telegrams should not be transmitted because they incited strikes and were not in a conciliatory form.

The said letter was also sent to Santiago Iglesias on April 3, 1918.

He would also testify that the telegraph service under his control is the only means available for the transmission of telegraphic messages.

JOSÉ MUÑOZ RIVERA: That as Secretary for the Senate he knows that the said Senate was declared in recess in November of last year when the Governor thought that the session was adjourned.

That on February of the following year and while the Legislative Assembly was in session by virtue of the recess, it was, however, called in special session in spite of the fact that the work for which it was convened had not been terminated.

That the governor vetoed the following bills approved by both Houses:

Creating a Grand-Jury system.

For the establishment of the People's Bank.

To promote the credit of the coffee industry.

To amend section 178 of the Code of Criminal Procedure by granting jury trials in some misdemeanor cases.

The resolution petitioning the Congress of the United States to extend to Porto Rico the rural credits and trade educational acts.

HENRY W. DOOLEY: would testify concerning a letter which was sent from San Juan to Hon. F. C. Roberts on April 17, 1918, preferring special charges against governor Yager, saying, among other things, that "no doubt he is not the man of the hour." In order to avoid copying the letter, we offer it in evidence separately, it having been published in "Justicia" on May 25, 1918.

The defense further says that counting upon the presence of witnesses Epifanio Fiz, Ramón Barrios and Santiago Iglesias, the last-named being absent in the United States but was expected to
23 be in Porto Rico about this time, we deem his testimony necessary and it would be as follows:

EPIFANIO FIZ and RAMÓN BARRIO: Not having time to copy the report made by them and published in "Justicia" on April 20, 1918, we offer it separately also.

They would testify also as to a telegram sent to Senator Santiago Iglesias informing him that a high official of the Fajardo Sugar Co. knew of a communication of the Governor to the Executive Committee of the Federation two hours before this Committee reported, the telephone message notifying Mr. Bird that the governor's letter was favorable to them.

SANTIAGO IGLESIAS: As may be seen, this witness is connected with nearly all of the foregoing evidence and furthermore he could testify as to the charges preferred by him against governor Yager to President Wilson through Mr. Gompers, the President of the American Federation of Labor. He witnessed also the attitude taken by the said Institution at the last convention when said Iglesias attended and at which also a resolution was adopted asking for the removal of Governor Yager and that Porto Rico be separated

from the Bureau of Insular Affairs and annexed to the Department of Interior and that a committee be appointed to investigate the general conditions of the country, which committee has been recently appointed and whose decision, and we understand that its report should be awaited before proceeding to this trial.

Wherefore, we pray this court to continue the trial of this case until the next term.

Arecibo, Porto Rico, July 29, 1918.

(Sd.) JOSÉ DE JESÚS TIZOL.

I, José de Jesús Tizol, attorney-at-law with an office in San Juan, under oath declare:

1. That I am the attorney in this case and have made the foregoing motion.

2. That the facts therein stated are true.

24 (Sd.) JOSÉ DE JESÚS TIZOL.

Sworn to and subscribed before me this 29th day of July, 1918, by attorney José de Jesús Tizol, of age, whom I personally know.

(Sd.) MANUEL L. CORBET,
Clerk of the District Court.

Filed in my office this 29th day of July, 1918.
(Sd.) MANUEL L. CORBET,
Clerk.

Attention is hereby called to the fact that defendant Jesús M. Balzac is temporarily at liberty under bail furnished by him.

I, Manuel L. Corbet, Clerk of the District Court for the Judicial District of Arecibo, Porto Rico, do hereby certify that the foregoing is a true and exact copy of the original as it appears of record in the court in criminal case No. 880, brought by the People of Porto Rico against Jesús M. Balzac, for libel; and to be forwarded to the Secretary of the Supreme Court of Porto Rico in compliance with section 356 of the Code of Criminal Procedure as amended by Act of March 7, 1908, I issue this copy under my signature and the official seal of the Court, in the city of Arecibo, this seventh day of June, 1919.

[SEAL.] (Sd.) MANUEL L. CORBET,
Clerk of the District Court of Arecibo.

25 In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Complainant and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

Opinion of the Court.

Delivered by Mr. Justice Wolf.

San Juan, Porto Rico, March 4, 1920.

There are five assignment- of error*s* in this appeal.

A motion for a continuance of the trial was presented on the ground that certain witnesses for the defense were not summoned. On motions of the defendant the trial was suspended for four times. The case was finally set for July 29, 1918. At the last moment, on July 26th, the 27th and 28th being Saturday and Sunday respectively, the defendant asked by telegraph that certain witnesses who were not duly summoned and did not appear, should be summoned. The practice followed by the defendant is not authorized by the law and his neglect in leaving the matter for the last moment is clear. Moreover, the motion for the continuance of the trial shows the material testimony which the witnesses who did not appear would give, and we think, granting that all their statements are true, that they do not justify the defendant's position.

In the second assignment of error the appellant maintains that he was entitled to a jury trial. The offense is a misdemeanor. As we understand the decisions of the Supreme Court of the United States in the cases of People of Porto Rico et al. v. Carlos Tapia and People of Porto Rico et al. v. José Muratti, 245 U. S. 639, that part of the 6th Amendment of the Constitution of the United States
26 giving a defendant in all criminal cases a right to a trial by jury is not applicable to Porto Rico. Under the Code of Criminal Procedure a defendant is only entitled to a jury trial in cases of felony.

The third assignment of error maintains that the information did not charge a crime under sections 243 and 244 of the Penal Code. Section 243 is as follows:

"A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach his honesty, integrity, virtue, or reputation, or publish the natural or alleged defects of one

who is alive, and thereby to expose him to public hatred, contempt or ridicule."

The article transcribed in the information in this case is so violent in its invective that we do not see fit to reproduce it for the purposes of our records. Not only did a simple reading of it show that the governor of Porto Rico was the subject of attack, but that in half a dozen or more places of the article there were phrases that, if true, would necessarily expose Arthur Yager to public hatred, contempt or ridicule. Moreover, several witnesses testified at the trial that they had read the article and would necessarily understand it as subjecting the governor to such public hatred, contempt or ridicule.

The fourth and fifth assignments of error may be treated together. In substance, the appellant maintains that the proof did not show that Balzac was the editor of the newspaper in which the libelous article appeared or that he had anything to do with the publication. The appellant says that proof presented by the People of Porto Rico was a newspaper wherein it appeared that Balzac was the editor. Objection was made to the admission of this paper, it is true, but before it was admitted a witness had been allowed to state,
27 without objection, that the defendant, whom he identified, was the editor of the said paper, and the very proof of the defendant tended to corroborate the testimony of the government that the defendant and appellant was responsible for the publication.

The judgment must be affirmed.

(Sd.) ADOLPH G. WOLF,
Associate Justice.

In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

Judgment.

San Juan, Porto Rico, March 4, 1920.

This court has considered the transcript of the record, the briefs filed by both parties and the oral argument of the appellee, for the reasons set forth in the preceding opinion it is held that the judgment of the District Court of Arecibo of May 31, 1919, should be affirmed. Let this judgment together with the opinion on which it is based be communicated to the lower court.

Adjudged and signed by José C. Hernández, Adolph G. Wolf, Emilio del Toro, Pedro de Aldrey, H. M. Hutchison.

I, Joaquin Lopez Cruz, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify that the foregoing copies
28 of the opinion and judgment agree with the originals; and in order to attach to the proper record, I issue this copy in San Juan, Porto Rico, this 10th day of March, 1920.

(Sd.) JOAQUIN LOPEZ CRUZ,
Secretary-Reporter.

(Sd.) By FELIPE JANER, JR.,
Deputy-Secretary.

In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Now comes defendant Jesus M. Balzac by his attorney Abraham Peña before this Hon. Court and respectfully shows:

That not being satisfied with the judgment rendered by this court affirming the judgment of the District Court for the Judicial District of Arecibo, he appeals to the Supreme Court of the United States in accordance with the right granted him by section 43 of the Organic Act for Porto Rico, and on the following two Constitutional grounds, to wit:

1st. Because the defendant has been denied the right granted him by the Sixth Amendment to the Constitution of the United States of being tried by a jury.

2nd. Because, in any event, if the law under which he was convicted and sentenced furnishes sufficient grounds therefor, it should be considered, by reason of its excessive harshness, as contrary to the letter and spirit of the First Amendment to the Constitution
29 of the United States.

Therefore, the defendant prays this court to consider the said appeal as taken to the Supreme Court of the United States and allow it by such approval as may be proper.

San Juan, Porto Rico, March 11, 1920.

(Sd.) LCDO. ABRAHAM PEÑA,
Attorney for Defendant and Appellant.

In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Libel.

Assignment of Errors.

Now comes the defendant-appellant, Jesús M. Balzac, by his undersigned attorney and files this assignment of errors on which he bases his appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Porto Rico of March 4, 1920, whereby the judgment of the District Court of Arecibo, of the 31st of May, 1919, was affirmed.

The errors on which the defendant appellant bases his appeal are as follows:

1. The Supreme Court of Porto Rico erred in dismissing the plea of the defendant-appellant that the said defendant was denied the right to be tried by a jury.

That right is set forth and recognized by the Sixth Amend-
30 ment to the Constitution of the United States, and in this case a freeman has been deprived of the right to be tried by his peers.

2. The Supreme Court of Porto Rico erred in affirming the judgment of the District Court of Arecibo of May 31, 1919, sentencing the defendant to five months in jail for the crime of libel, which sentence the defendant considers excessive and severe and contrary to the spirit and letter of the First Amendment to the Constitution of the United States, inasmuch as the said crime of libel was committed at a historical moment of agitation and excitement in the country due to the agricultural strikes and the judgment might have been satisfied by only sentencing the defendant to pay a fine.

The above are the assignments of error that the appellant points out for the purposes of this appeal, which are respectfully submitted to this Supreme Court of Porto Rico.

San Juan, Porto Rico, March 12, 1920.

(Sd.) LCDO. ABRAHAM PEÑA,
Attorney for Defendant, Appellant.

In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

On Appeal to the Supreme Court of the United States.

Order.

San Juan, Porto Rico, March 20, 1920.

The appeal in the above-entitled cause is hereby allowed, the appellant being required to file a bond in the sum of One
31 Thousand Dollars to remain in temporary liberty while the said appeal is pending, and also a bond in the sum of Three Hundred Dollars to answer for the costs that may be imposed upon him, the said bonds to be approved by the Chief Justice of this court; and it is further ordered that appellant file a Præcipe of the proceedings and papers to be included in the transcript on appeal, according to Rule 8 of the Supreme Court of the United States, the said documents to be translated into the English language and filed in the Office of the Secretary of this Court within the period fixed by law, to be forwarded to the said Supreme Court of the United States.

The court so ordered it and the Chief Justice signs; attest.

(Sd.) JOSÉ C. HERNÁNDEZ,
Chief Justice.

" JOAQUIN LOPEZ,
Secretary-Reporter.

In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,
vs.
JESÚS M. BALZAC, Defendant and Appellant.

Libel.

Bond.

UNITED STATES OF AMERICA,
The President of the United States:

By these presents, We, Santiago Iglesias and Inés Rita Aybar de Peña, residents of the District of San Juan, are firmly and duly bound unto The People of Porto Rico in the sum of One Thousand Dollars ($1,000), to the payment of which well and truly to be made if appellant Jesús M. Balzac should fail to comply with
32 the obligation hereinafter mentioned we not only bind ourselves jointly and severally by this instrument but also our heirs, executors and administrators.

Signed with our seals this nineteenth day of March, 1920.

The condition of the foregoing bond is as follows:

Whereas, Attorney Abraham Peña has taken an appeal in behalf of defendant-appellant, Jesús M. Balzac, to the Supreme Court of the United States from the judgment rendered by the Supreme Court of Porto Rico on March 4, 1920, whereby the judgment of the District Court of Arecibo, of the 31st of May, 1919, was affirmed, the said judgment sentencing the defendant to five months of imprisonment.

Whereas, the said appeal has been allowed by order of the 19th of March, 1920, wherein the Supreme Court of Porto Rico required a bond from the appellant in the sum of One Thousand Dollars for his temporary liberty while the said appeal is being considered and decided by the Supreme Court of the United States.

Therefore, by this bond we shall be held liable for the appearance of said Jesús M. Balzac before the Supreme Court of Porto Rico or before the District Court for the Judicial District of Arecibo and for his submission and obedience to any rules or orders that may be made by any of said courts by reason of the said appeal, and also that the said Jesús M. Balzac shall appear in any of the aforesaid courts at the time and day on which he may be summoned to appear, in which case this obligation or bond shall be null and void; but if the said Jesús M. Balzac should fail to appear before any of the said courts and submit to the orders that may be rendered by such courts by reason of the appeal taken, this bond or obligation shall remain in full force and may be made effective.

(Sd.) SANTIAGO IGLESIAS.
INÉS R. A. DE PEÑA.

33 Signed before me by Santiago Iglesias and Inés R. Aybar de Peña, of age, property owners, residents of this city, to me personally known, in San Juan, P. R., this 19th day of March, 1920.

(Sd.) JOSÉ SOTO RIVERA,
Notary Public.

No. 225.

I, Santiago Iglesias, of this city, being duly sworn say: That I am a resident of this city of San Juan; that I own real estate in the Municipality of San Juan of the value of more than One Thousand and Two Hundred Dollars, exclusive of all lien thereon; that I pay taxes to the Treasury of Porto Rico of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesús M. Balzac I do so freely and without any mental reservation or purpose of evasion.

[Notary Seal.] (Sd.) SANTIAGO IGLESIAS.

Internal Revenue stamp of 25 cts., cancelled.

Sworn to and subscribed before me by Santiago Iglesias, of age, property owner, resident of this city, to me personally known, this 19th day of March, 1920.

(Sd.) JOSÉ SOTO RIVERA,
Notary Public.

I, Inés R. Aybar de Peña, of this city, being duly sworn, say: That I am a resident of this city of San Juan; that I own real estate in the Municipality of Mayaguez of the value of more than One Thousand and Two Hundred Dollars ($1,200), exclusive of
34 all liens thereon; that I pay taxes to the Treasury of Porto Rico of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesús M. Balzac I do so freely and without any mental reservation or purpose of evasion.

(Sd.) INÉS R. A. DE PEÑA.

No. 226.

Sworn to and subscribed before me by Inés R. Aybar de Peña, of age, property owner, resident of this city, to me personally known, in San Juan, P. R., this 19th day of March, 1920.

[Notary Seal.] (S.) JOSÉ SOTO RIVERA,
Notary Public.

Internal Revenue stamp of 25 cts., cancelled.

In the Supreme Court of Porto Rico.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Bond.

UNITED STATES OF AMERICA,
The President of the United States:

By these presents, We, Santiago Iglesias and Inés Rita
35 Aybar de Peña, residents of the District of San Juan, are firmly and duly bound unto The People of Porto Rico in the sum of Three Hundred Dollars ($300), to the payment of which well and truly to be made if appellant Jesús M. Balzac should be sentenced to pay the costs in the appeal taken as hereinafter stated we not only bind ourselves jointly and severally by this instrument, but also our heirs, executors and administrators.

The condition of the foregoing obligation is as follows:

Whereas, attorney Abraham Peña has taken an appeal in behalf of defendant-appellant Jesús M. Balzac to the Supreme Court of the United States from the judgment rendered by the Supreme Court of Porto Rico on March 4, 1920, whereby the judgment of the District Court of Arecibo of May 31, 1919, was affirmed, the said judgment sentencing the defendant to five months in jail.

Whereas, the said appeal has been allowed by order of March 20, 1920, wherein the Supreme Court of Porto Rico also required a bond from the appellant in the sum of One Thousand Dollars for his temporary release and a bond of Three Hundred Dollars for the costs of the appeal.

Therefore, by this bond we are held liable for the appearance of said Jesús M. Balzac before the Supreme Court of Porto Rico or the District Court for the Judicial District of Arecibo and for his submission and obedience to all rules and orders that may be made by the said courts by reason of the said appeal and for the payment by said defendant-appellant of any costs that he may be ordered to pay, in which case this obligation or bond shall be null and void, but if said Jesús M. Balzac should fail to pay such costs this bond or obligation shall remain in full force and may be made effective.

(Sd.) INÉS R. DE PEÑA.
SANTIAGO IGLESIAS.

Signed before me, by Inés R. Aybar de Peña and Santiago Iglesias, of age, property owners, residents of this city, to me person-
36 ally known, in San Juan, Porto Rico, this — of April, 1920.

____ ____,
Notary Public.

No. 698.

I, Inés R. Aybar de Peña, of this city, being duly sworn; say: that I pay taxes to the Treasury of Porto Rico, of more than in the Municipality of Mayaguez of the value of more than One Thousand and Two Hundred Dollars, exclusive of all liens thereon; That I pay taxes to the Treasury of Porto Rico, of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesus M. Balzac, I do so freely and without any mental reservation or purpose of evasion.

(Sd.) INÉS R. A. DE PEÑA.

Sworn to and subscribed before me by Inés R. Aybar de Peña, of age, property owner, resident of this city, to me personally known, in San Juan, Porto Rico, this 7th day of April, 1920.

[Notary's Seal.] (Sd.) ANGEL R. DE JESÚS,
Notary Public.

Internal Revenue stamp of 25 cts., cancelled.

I, Santiago Iglesias, of this city, being duly sworn, say: that I am a resident of this city of San Juan; that I own real estate in the Municipality of San Juan of the value of more than One Thousand and Two Hundred Dollars ($1,200) exclusive of all liens thereon; that I pay taxes to the Treasury of Porto Rico of more than fifteen dollars ($15), and that the said property is not
37 subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesús M. Balzac, I do so freely and without any mental reservation or purpose of evasion.

(Sd.) SANTIAGO IGLESIAS.

No. 699.

Subscribed and sworn to before me by Santiago Iglesias, of age, property owner, resident of this city, to me personally known, in San Juan, Porto Rico, this — day of April, 1920.

[Notary's Seal.] (Sd.) ANGEL R. DE JESÚS,
Notary Public.

Internal Revenue stamp of 25 cts., cancelled.

In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

Order.

San Juan, Porto Rico, April 8, 1920.

The bonds of One Thousand Dollars ($1,000) and Three Hundred Dollars ($300) respectively given by Santiago Iglesias and Inés Rita Aybar de Peña in the appeal taken by the defendant in the above-entitled cause having been considered, the same are
38 approved; and it is ordered that while such appeal is pending the defendant be temporarily at liberty.

The court so ordered and the chief Justice signs; attest.

(Sd.) JOSÉ C. HERNANDEZ,
Chief Justice.

" JOAQUIN LOPEZ,
Secretary-Reporter.

39 In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

v.

JESÚS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

On Appeal to the Supreme Court of the United States.

Citation.

UNITED STATES OF AMERICA, *ss:*

To the People of Porto Rico, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the Supreme Court of Porto Rico, wherein Jesús M. Balzac is appellant and you are appellee, to show cause, if any there be,

why the judgment rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable José C. Hernández, Chief Justice of the Supreme Court of Porto Rico, this 13th day of April in the year of Our Lord one thousand nine hundred and twenty.

[Seal of Supreme Court of Porto Rico, United States of America.]

JOSÉ C. HERNÁNDEZ,
Chief Justice of the Supreme Court of Porto Rico.

Attest:
JOAQUIN LOPEZ,
Secretary-Reporter of the Supreme Court of Porto Rico.

Supreme Court of Porto Rico.

Marshal's Office.

Received this citation on its date and served the same by delivering personally a copy thereof to the Hon. Attorney General of Porto Rico, at San Juan, Porto Rico, this 14th day of April, 1920.

S. C. BOTHNELL,
Marshal.

40 In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Libel.

Præcipe for Record.

The Clerk of this Court is hereby requested to prepare a certified copy of the transcript of the record in the above-entitled cause for the use of the Supreme Court of the United States by including therein the following:

1. Information.
2. Judgment of the District Court of Arecibo, P. R.
3. Appeal to the Supreme Court of Porto Rico.
4. Statement of the Case.

5. Motion for continuance.
6. Opinion of the Supreme Court.
7. Judgment of the Supreme Court.
8. Appeal to the Supreme Court of the United States.
9. Assignment of Errors.
10. Order allowing appeal.
11. Bond for temporary liberty of defendant.
12. Bond for costs.
13. Order approving bonds.
14. Citation.
15. This Præcipe.
16. Notice of filing of Præcipe with proof of service.

(Sd.) LCDO. ABRAHAM PEÑA,
Attorney for Defendant-Appellant.

41 In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Libel.

To Salvador Mestre,
Attorney General of Porto Rico:

Please take notice that on the 30th of September, 1920, the undersigned filed with the Clerk of this Court a Præcipe for the record to be transmitted to the Supreme Court of the United States on the appeal taken in the above cause, a copy of which Præcipe is hereby served on you.

Dated San Juan, P. R., September 30, 1920.

(Sd.) LCDO. ABRAHAM PEÑA.
Attorney for Defendant-Appellant.

Served with copy, this 30th day of September, 1920.

(Sd.) SALVADOR MESTRE,
Attorney General of Porto Rico.

42 ISLAND OF PORTO RICO,
District of San Juan, ss:

I, Abraham Peña, being duly sworn, depose and say: that I am the attorney for the appellant herein; that on the 30th of September I served a copy of the foregoing notice of filing and of the Præcipe therein referred to upon Salvador Mestre, Attorney General of Porto Rico, by delivering in his office, in San Juan, Porto Rico, true copies of said documents.

San Juan, Porto Rico, September 30, 1920.

(Sd.) LCDO. ABRAHAM PEÑA,
Attorney for Defendant-Appellant.

Subscribed and sworn to before me, this 30th day of September, 1920, by Abraham Peña, of full age, lawyer and resident of San Juan, Porto Rico, to me personally known.

(Sd.) ENRIQUE CAMPILLO,
Notary Public.

Affidavit No. 781.

Revenue stamp cancelled.

43 In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Libel.

On Appeal to the Supreme Court of the United States.

Translator's Certificate.

I, Felipe Janer, Jr., official interpreter and translator of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this office.

In testimony whereof, I have signed this certificate in the city of San Juan, Porto Rico, this 19th day of October, 1920.

FELIPE JANER, JR.,
Interpreter and Translator of the Supreme Court of Porto Rico.

44 In the Supreme Court of Porto Rico.

No. 1416.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

On Appeal to the Supreme Court of the United States.

Clerk's Certificate.

I, Joaquin Lopez Cruz, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above-entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant, according to the præcipe filed in my office by said appellant; I further certify that the translations of said papers and proceedings have been revised by the official interpreter and translator of this court, as shown by his certificate hereto attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the city of San Juan, Porto Rico, this 19th day of October, 1920.

[Seal of Supreme Court of Porto Rico, United States of America.]

JOAQUIN LOPEZ.
Secretary-Reporter of the Supreme Court of Porto Rico.

[Canceled internal-revenue stamps.]

Endorsed on cover: File No. 28,000. Porto Rico Supreme Court. Term No. 178. Jesús M. Balzac, appellant, vs. The People of Porto Rico. Filed December 7th, 1920. File No. 28,000.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 179.

JESUS M. BALZAC, APPELLANT,

vs.

THE PEOPLE OF PORTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

FILED DECEMBER 5, 1921.

(28,001)

(28,001)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 179.

JESUS M. BALZAC, APPELLANT,

vs.

THE PEOPLE OF PORTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1921.

1 In the Name and by the Authority of the People of Porto Rico.

UNITED STATES OF AMERICA,
The President of the United States, ss:

In the District Court of Arecibo, P. R., May 31, 1918.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Information Charging Libel.

Now comes José R. Aponte, prosecuting attorney, and files this information in open court against Jesús M. Balzac for libel, (misdemeanor) as provided in sections 243 and 244 of the Penal Code, committed as follows:

In Arecibo, Porto Rico, of the Judicial District of the same name, the defendant Jesús M. Balzac, Editor and Manager of the daily paper "El Baluarte" published and circulating in said Judicial District of Arecibo, unlawfully, wilfully and maliciously, published and caused to be composed, edited and published, on April 23, 1918, within the said Judicial District of Arecibo, P. R., and in the aforesaid paper, a defamatory, scandalous, false and malicious libel in the form of an article published under the heading "The Voice of the People," containing false, scandalous, malicious and defamatory matters, words and charges against the Governor of Porto Rico, Arthur Yager, the said libel reading as follows:

"The Voice of the People.—From the obscure depths of their wretched huts, homes of pain and sorrow, the Porto Rican working classes full of anguish and pain unceasingly exclaim: Bandit,
2 assassin, tyrant, despot. You rule as a Bonaparte, act as a Neron and command as a Marat. You trample on right, smother thought, suppress the tribune and the press and support abuse for the benefit of men without conscience because you have at your back the soldiers and guns, the police force and their clubs, the judges and prosecuting attorneys; because you are a Colossus and we are but atoms. That is abuse, outrage, injustice, crime, violence, massacre, force * * * This is not liberty or democracy. You have traduced the laws, outraged justice and trampled on honor. You have destroyed everything, even the hope of defense. That is tyranny. Your abuse is unbearable. Hear our protest and our exorcism * * * Listen to our vilification and malediction, since you did not care to hear our just complaints. That is your chastisement, our execration. We do not open our breasts to you because we believe there are no hearts in them. You are a living human being

without sentiment or feelings. You are a traitor. You have abused our patience and meekness, but hear, hear, monster. We, the vagabonds, the unfortunate, the proscribed from the land of the good, who wander about without passport and name, without personality or home, dead of hunger and pain, vanquished by the base and corrupt capitalist, who day after day sprinkle the soil with bitter sweat and copious tears; we, who bruise our breasts against the shop's table and leave portions of our quivering flesh in the machinery; the eternal rabble; the imbecile populace; the persecuted and massacred; we will no longer bear with your despotism, abuse and in-
3 famies. And in order that liberty may be reborn and ignominy may die, that honor may shine on our faces; in order that privileges and classes may be suppressed; that right may prevail and the martyrs in the infamous prisons may be liberated; that the son may be restored to his father and the husband to his wife and shelter be given to the children that have been abandoned by your fault, your great fault; in order that this *century* and its people may soon arise from abyection,—we declare—and hear it well, usurper—that sacrifice is nothing considering your outrageous and unconscious greatness; and we pledge our lives at the altar of liberty and democracy, that you, shapeless embryo of a race of liberators, have sprinkled with the blood of our craniums. We are already tired of the bloody robbery of your lackies and prefer that death take us to the bottom of the graves than be contaminated in the filthy and miry place of servitude which you have worked out in the fertile soil of this blessed land, which does not open to ingulf you because its virgin soil would become poisoned and brambles and thorns would grow up instead of flowers. You are so abominable that our soil refuses to give you sepulture.—The Knight-Errant."

All of which is tending to impeach the honesty, integrity, virtue, or reputation of the Hon. Arthur Yager, thereby exposing him to public hatred, contempt or ridicule.

This fact is contrary to the law for such cases provided and against the peace and dignity of the People of Porto Rico.

(Sd.) JOSÉ R. APONTE,
District Prosecuting Attorney.

4 The foregoing information is supported by the testimony of witnesses examined by me under oath and I solemnly believe there is just cause to present it in the court.

(Sd.) JOSÉ R. APONTE,
District Prosecuting Attorney.

Sworn to and subscribed before me this 31st day of May, 1918.

(Sd.) MANUEL L. CORBET,
Clerk of the District Court of Arecibo, P. R.

Session of May 31st, 1918, 3 p. m.

Case No. 881.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Charge: Libel.

The defendant appeared in open court and after having been informed as provided for in Section 143 of the Code of Criminal Procedure, stated that his name was Jesús M. Balzac. The district attorney read the information and handed a copy of it to the said defendant, who pleaded not guilty.

UNITED STATES OF AMERICA,
The President of the United States, ss:

In the District Court for the Judicial District of Arecibo, P. R.

Case No. 881.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Charge: Libel.

5 *Judgment.*

In view of the evidence examined during the session held on the 29th of July, 1918, the court finds the defendant, Jesús M. Balzac, guilty of the crime of libel as charged and sentences him to imprisonment for four months in the District Jail and the payment of the costs of this prosecution.

I, Manuel L. Colbert, Clerk of the District Court for the Judicial District of Arecibo, do hereby certify that the foregoing is a true and exact copy of the judgment rendered by the aforesaid court in the above-entitled criminal action, which was tried before the said court during the session held on the 29th of July, 1918, as appears from the Minutes of this Court of the session held on the said date. And for its inclusion in the corresponding record, I issue this copy under my signature and the official seal of the court in the city of Arecibo this 31st day of July, 1918.

(Sd.) MANUEL L. CORBET,
Clerk District Court.

In the District Court for the Judicial District of Arecibo, P. R.

Case No. 881.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Charge: Libel.

To the Clerk and District Attorney of the District Court of Arecibo:

You are hereby notified that not being satisfied with the judgment rendered by the court on this date and in this case, I appeal to the Supreme Court of Porto Rico.

Arecibo, P. R., July 31, 1918.

(Sd.) JESÚS M. BALZAC.

6 Received copy this 31st day of July, 1918.

(Sd.) JOSÉ R. APONTE,
District Attorney.

Filed in my office this 31st day of July, 1918.

(Sd.) MANUEL L. COLBERT,
Clerk.

In the District Court for the Judicial District of Arecibo, P. R.

Case No. 881.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Charge: Libel.

Statement of the Case.

Be it remembered that on July 29, 1918, in the District Court of Arecibo, Porto Rico, present Hon. Enrique Lloreda Casabo, judge of said court, the criminal prosecution brought by The People of Porto Rico against Jesús M. Balzac for the crime of Libel as defined in sections 243 and 244 of the Penal Code of Porto Rico was tried orally and publicly, The People of Porto Rico appearing by José R. Aponte, District Attorney of Arecibo, and the defendant being present in person and represented by his attorney, José de Jesús Tizol.

The parties having been asked by the court if they were ready for trial, counsel for the defendant requested that the marshal of the

court be called to state whether certain witnesses for the defense had been subpœnaed in accordance with a præcipe previously filed. The marshal reported that the Governor's secretary was at Jajome and that Colonel Shanton and Mr. Robert were not at their homes for which reason he had been unable to subpœna them; that the marshal of Jan Juan reported that he had not had time to subpœna the Commissioner of the Interior.

7 Attorney Tizol informed the court that there were other necessary witnesses for the defense who had not appeared, and asked leave of the court to file a motion regarding the absence of the witnesses and for a continuance. At the same time he moved orally that the defendant be allowed a trial by jury. The district attorney objected and the court overruled the motion on the ground that the Code of Criminal Procedure does not give the right to a trial by jury in these cases. Attorney Tizol excepted to this ruling and the court stated that even in the supposition that the law granted trials by juries in misdemeanor cases, the defendant should have asked for it at the time of his arraignment and not having done so, it should be understood that he waived that right. (Ex parte Torres, 4 P. R. R. 146.) The court added that a trial by jury can only be granted in a felony case and that privilege has not been extended to prosecutions for libel or any other misdemeanor cases. (The People v. Bird, 5 P. R. R. 183.) Attorney Tizol filed a written motion for a continuance and the court ordered that it be made a part of the record so that a copy thereof might be included in the transcript of the record.

The District attorney opposed the continuance for the reason that the testimony which some of the witnesses would give of facts referring to the Governor of Porto Rico can be given only by the Chief of the Government in accord with the Chief of Police because its context clearly shows that the acts were performed as measures of public policy and bear no relation to the crime of libel with which defendant Jesús M. Balzac is charged. Regarding the other testimony of Epifanio Fiz, Ramón Barrios, Santiago Iglesias and Henry W. Dooley, it is the personal opinions of these witnesses which have no weight under a plea of justification of a libel because the plea should be directed specially to the infamatory matter and should be supported by facts showing that the libelous matter was

8 published by the person charged with it and cannot be proved by a public rumor or hearsay. In support of this theory he cited 25 Cyc. 414, et seq., and Newell on Slander and Libel, 658 et seq. He further stated that this case had been continued four times prior to this date with the knowledge of the defendant's attorney who asked for the continuance and has had sufficient time to give the names of the witnesses to the court so that they might have been subpœnaed in due time.

The court ruled on the motion for continuance as follows:

Whereas, at the call of this case for trial the defendant by his attorney filed a verified motion for a continuance to the next term, which motion was opposed by the district attorney and argued by

both parties; whereas, the trial of this case was set in open court at the reading of the criminal docket on June 1st, 1918, for the 27th of the said month, and on the 26th, on motion of counsel for the defendant alleging that he was busy with other criminal cases before the District Court of San Juan, it was continued and again set for the 29th, on which date it was also continued for a similar reason and again set for July 10th, when it was again continued on account of the illness of the defendant, on whose motion was newly set for the 26th of this month, the said setting having been, on motion of counsel for defendant, continued to the 29th; whereas, notwithstanding the time elapsed and those four settings and continuances the defendant has not asked at any time that the witnesses referred to in the motion for continuance be subpœnaed and no showing was made of why the said witnesses were not previously subpœnaed. Whereas, subpœnas for the said witnesses were requested by telegraph on the 26th at noon, or only two days before the trial, said days being Saturday and Sunday, and therefore due diligence has not been shown; whereas, this court will close
9 its regular term within two days and thereafter the case will go over for three months more, as the next criminal term will be held in November, and that would be contrary to the rule of procedure with respect to a speedy trial as provided for in paragraph 1 of section 11 of the Code of Criminal Procedure; whereas, the said motion does not show the materiality of the evidence referred to therein, the same referring to letters and communications which in themselves constitute hearsay evidence; whereas, it has not been alleged that the facts to which that evidence would refer cannot be proven by some other witness. Therefore, in view of the case of The People v. Gallart, 11 P. R. R. 361, the court overrules the motion of the defendant and orders the case to trial.

Attorney Tizol excepted to the ruling of the court.

The information was read and Attorney Tizol, by leave of the court, filed a demurrer on the ground that the information does not charge the crime defined by sections 243 and 244 of the Penal Code, inasmuch as it lacks the requirements pointed out in the case of The People of Porto Rico vs. Garcia, decided by the Supreme Court. The district attorney opposed the demurrer on the ground that it was not in legal form and because in the case of The People vs. Aybar it was held that in such cases it is not necessary that the informations contain colloquims or innuendos, according to section 87 of the Code of Criminal Procedure. The court overruled the demurrer and Attorney Tizol excepted, stating that the defendant pleaded not guilty to the information and alleged as a defense that the supposed libelous publication is justifiable because it refers to a public official and does not mention the commission of a public crime.

Evidence for the Prosecution.

Having been duly sworn, RAMÓN ALFONSO RIVERA testi-
10 fied that he is the postmaster of Arecibo and was such postmaster in the month of April. That he knows a newspaper called "El Baluarte" which circulates by mail and its editor is J. M. Balzac whom he sees here. The district attorney shows him a newspaper which he examines and recognizes as the same newspaper of which about eighty copies circulated by mail. That J. M. Balzac has the privilege for the circulation of the newspaper. The district attorney offers in evidence No. 74 of the newspapers called "El Baluarte", of April 23, 1918, and it was admitted without objection by the defense.

JOSÉ ADORNO was duly sworn and, in answer to questions of the district attorney, testified that he is a resident of Arecibo and its Municipal Secretary; that formerly he was a journalist; that he knows the newspaper called "El Baluarte" which is published on Lealtad Street at the corner of Puente de Hierro Avenue, Arecibo, and its editor is J. M. Balzac. The newspaper introduced in evidence was shown to him and he testified that he knows it and has seen copies of it on several occasions; that on April 23rd he read in it an article headed "The Voice of the People" which he thinks refers to the Governor because the said article was published at a time when Governor Yager was taking certain steps to secure order and social welfare. I consider the article libelous upon the Governor from beginning to end it is a libel. It says: Bandit, assassin, tyrant, despot. You rule as a Bonaparte, act as Nero*n* and command as a Marat. You trample on right, smother thought, suppress the tribune and the press and support abuse for the benefit of men without conscience because you have at your back the soldiers and guns, the police force and their clubs, the judges and prosecuting attorneys; because you are a Colossus and we are but atoms. That is abuse, outrage, injustice, crime, violence, messacre, force * * * This is not liberty or democracy. You have tra-
11 duced the laws, outraged justice and trampled on honor. You have destroyed everything, even the hope of defense. That is tyranny. Your abuse is unbearable. Hear our protest and our exorcism * * * Listen to our vilification and malediction, since you did not care to hear our just complaints. That is your chastisement, our execration. We do not open our breasts to you because we believe there are no hearts in them. You are a living human being without sentiment or feelings. You are a traitor. You have abused our patience and meekness, but hear, hear, monster. We, the vagabonds, the unfortunate, the proscribed from the land of the good, who wander about without passport and name, without personality or home, dead of hunger and pain, vanquished by the base and corrupt capitalist, who day after — sprinkle the soil with bitter sweat and copious tears; we, who bruise our breasts against the shop's table and leave portions of our quivering flesh in

the machinery; the eternal rabble; the imbecile populace; the persecuted and massacred; we will no longer bear with your despotism, abuse and infamies * * * And in order that liberty may be reborn and ignominy may die, that honor may shine on our faces; in order that privileges and classes may be suppressed; that right may prevail and martyrs in the infamous prisons may be liberated; that the son may be restored to his father and the husband to his wife and shelter be given to the children that have been abandoned by your fault, your great fault; in order that this century and its people may soon arise from abyection,—we declare—and hear it well, usurper—that sacrifice is nothing considering your outrageous and unconscious greatness; and we pledge our lives at the
12 altar of liberty and democracy, that you, shapeless embryo of a race of liberators, have sprinkled with the blood of our craniums. We are already tired of the bloody robbery of your lackies and prefer that death take us to the bottom of the graves than be contaminated in the filthy and miry place of servitude which you have worked out in the fertile soil of this blessed land, which does not open to ingulf you because its virgin soil would become poisoned and brambles and thorns would grow up instead of flowers. You are so abominable that our soil refuses to give you sepulture." Witness says that all these expressions refer to the Governor because he represents a power in the island, and they are all written with the purpose of injuring his personality.

In answer to a question by the defense he said that the article refers to the Governor because when it was published the Governor had taken measures to secure order and had given instructions to the police to maintain order in the country so that the rights of everybody should be respected, which orders were published in the press to avoid incitation to rebellion, all having been done according to law.

RAMON SEIJO TAVAREZ was duly sworn and in reply to questions by the prosecuting attorney testified that he is a resident of Arecibo, a minor surgeon and an employee of the municipality, having been formerly a journalist. He has seen a newspaper published here called "El Baluarte" whose editor is Mr. Balzac (pointing at him), which paper he reads and pays for, having been a subscriber since it was first established. He read in No. 74 an article headed "The Voice of the People" and thought that it referred to the Governor, he being the Chief Executive in authority. He regards the article as defamatory of the Governor from beginning to end, as it employs such words as "bandit", "assassin", "tyrant" and "despot".
13 It says: "You *You* govern as a Bonaparte, act as a Neron and command as a Marat. You trample on the right, suppress thought, uphold abuse for the benefit of men without conscience because you are defended by the soldiers and guns, the police and their clubs, the judges and prosecuting attorneys; because you are a Colossus while we are atoms." The witness considered such words as libelous upon the Governor.

The Government's evidence having been examined it was agreed by the parties that the witness for the defense, Prudencio Rivera, should testify in this case the same as he did at the former trial of the case of People of Porto Rico vs. Jesus M. Balzac, No. 880.

Witness for the Defense.

PRUDENCIO RIVERA was duly sworn and in answer to questions by attorney Tizol testified that he is a resident of San Juan, organizer of The National Union of Cigar-makers of Porto Rico and vice-president of the Executive Committee of the Free Federation of Laborers; that in April of this year he lived at San Juan and at the time when the article headed "The Voice of the People" was written there was a strike. He knows Mr. Balzac and took part in the strike movement, explaining what he did. A meeting took place in Bayamón on September 1st, when the Second Agricultural Assembly was held for the purpose of carrying into execution measures which had been adopted at the former assembly, among them being one adopted at Bayamón for demanding a minimum agricultural wage of $1.50 and 75 cents for women. The Executive Committee of which witness is a member was instructed to demand the same from the Association of Sugar Producers, which they did, but received no answer. The same thing was done in November with the same result. Instructions were given to the Unions that they ask aid from the American Federation of Labor, and when we had made
14 known the indifference with which the matter was considered by those who should have considered it carefully we appealed to Governor Yager and asked him to call a meeting of the planters. He promised to do so but did not, so we appealed to Mr. Gompers, President of the American Federation of Labor. February 10th was set for a meeting of the Executive Committee of the American Federation of Labor to pass on the petition, but no such decision was reached, President Gompers sent us a copy of a citation for the interview and we met. The Executive Committee met and resolved to call on the Governor about the matter and he answered that "apparently there was no general strike and he deemed it unnecessary to issue the call." Notwithstanding the statements made by the Governor there was a strike since September at some places and while the strike was going on was when the article in the "Baluarte" appeared. He took part in the interview with the Governor, the last one having been held in the month of March. He knows of the protests made on account of the suspension of certain meetings and parades, but was not at the meeting which was suspended. He received instructions from the Executive Committee to proceed to Ponce to aróuse the District and on the day after his arrival there, in the first fortnight of April, he went to the telegraph office where he delivered a telegram he wanted to send to inform his Office of his arrival and of having met a number of laborers during the night and that a meeting had been held on Mendez Vigo Street, also stating that the police had not disturbed the order of the meeting; that he was informed by the telegraph operator that the telegram could

not be sent because it contained a criticism of the police force and asked that the money should be refunded to him which was done together with a note from the Chief of the Bureau. The newspapers which then took part in the campaign were "Justicia", "El Baluarte", "Yo Acuso", "Conciencia Popular", and some other popular newspaper of the workmen.

15 In answer to questions by the prosecuting attorney he said that he could not give the exact date when the strike commenced, but that the first reports came from Humacao in December and the strike had not terminated yet. That the agricultural strike we declared was terminated by the Government and not by us. At present we are not on a strike.

Judge: Yes or no; why did you say 'yes'?

Witness: We are not on a strike.

Pros. Atty.: You have stated that a telegram was returned to you in Ponce?

Witness: Yes, Sir. I know personally who issued the order. I saw it after it was shown to me by Palacios in a book containing Government's Circulars, from the Department of Interior, Mr. Enright being Commissioner of the Interior.

The "Baluarte" was a newspaper which made propaganda in favor of the strike; he had relations with Balzac, but does not know whether he was the editor of "Baluarte" at that time.

Pros. Atty.: I move the court to order that the whole testimony be stricken out, it being immaterial and making no reference to the defendant.

Atty. Tizol: I object. I called this witness to prove that there was a strike at that time.

Judge: I really think that a link is lacking to connect this testimony with the defendant, but I also think that it is unnecessary to strike it out because it may be considered pertinent.

I, Enrique Lloreda Casabo, Judge of the District Court of Arecibo, Porto Rico, do hereby certify that the foregoing statement of the case contains all the evidence examined at the trial of criminal action No. 881, prosecuted by The People of Porto Rico against Jesus M. Balzac for a crime of libel, as well as all the exceptions taken at said trial, the said Statement having been drafted

16 by the court after considering the statements made by the prosecuting attorney who was then the only party who appeared on October 25, 1918, at the hearing required by law; therefore I approve the same as it was presented and it is hereby ordered that as approved it forms a part of the Judgment-Roll.

Given under my hand and the seal of this Court in the city of Arecibo, this 26th day of May, 1919.

(Sd.) ENRIQUE LLOREDA,
Judge of the District Court of Arecibo.

In the District Court for the Judicial District of Arecibo, P. R.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Libel.

Motion for Continuance.

Now comes the defendant by his attorney José de Jesús Tizol, and respectfully shows:

1st. That he was summoned to appear today in this court for the trial of the case of People of Porto Rico v. Jesus M. Balzac.

2nd. That in due time, about the 25th instant, he sent a telegram to the judge of this court praying for an order directed to the proper official for subpœnaing the following witnesses:

17 Pedro Rodriguez, Governor's Private Secretary; Geo. Shanton, Chief of Insular Police; José Muñoz Rivera, Secretary of the Insular Senate; Guillermo Esteves, Commissioner of the Interior, and Henry W. Dooley.

3rd. That according to the report of the marshal the said witnesses were not subpœnaed at San Juan, the place of their residence as duly given by this defense.

4th. That for that reason they were not present when the trial was commenced.

5th. The defense believes that the testimony which the said witnesses would give at the trial would be material to the case and not cumulative; that due diligence having been exercised on his part to obtain their testimony he believes that their presence at the trial is absolutely necessary and he is sure that they would testify as follows:

PEDRO RODRIGUEZ: That on January 30, 1918, at the request of Santiago Iglesias, he wrote him a letter in the following terms:

SIR:

In accordance with your request I have been instructed by the Governor to furnish you "with a copy of his telegram to the mayor of Guayama, as follows: San Juan, Porto Rico, January 29, 1918. Genaro Cautiño, mayor of Guayama, Porto Rico.—In view of the present condition of war and of the decision of the Department of Labor of the United States to send to Porto Rico a mediator for conciliation in this matter, no aid should be given to any strike or

movement at present and no permit should be granted for the purposes mentioned in your telegram. Arthur Yager.

Respectfully,
(Sd.) P. S. RODRIGUEZ,
Governor's Secretary.

GEO. SHANTON: That the following was contained in a circular letter sent to Andres Arellano on March 9, 1918, and signed by Geo. Shanton, Chief of the Insular Police: That in regard to parades of strikers on public roads and in view of the many crimes, no
18 permit should be given to strikers to use national or labor flags, or any flag of any kind, or musical instruments, that may infiltrate enthusiasm in the strikers.

That on February 1st, the following communication was sent to the District Chief of Humacao, to wit: Notify the mayor, by order of the Governor, not to permit parades by agitators of strikers in view of the present condition of war. The Police will not permit public meetings or parades on public roads, they only being entitled to enter into peaceful strikes without any parades.

We think he would also testify that on several occasions the police men under his orders have been furnished to protect the transportation of strike-breakers to the several centrals where strikes exist.

GUILLERMO ESTEVES would testify that as Commissioner of Interior he gave instructions in compliance with orders from the Governor of Porto Rico to the effect that certain telegrams should not be transmitted because they incited strikes and were not in a conciliatory form.

The said letter was also sent to Santiago Iglesias on April 3, 1918.

He would also testify that the telegraph service under his control is the only means available for the transmission of telegraphic messages.

JOSÉ MUÑOZ RIVERA: That as Secretary for the Senate he knows that the said Senate was declared in recess in November of last year when the Governor thought that the session was adjourned.

That on February of the following year and while the Legislative Assembly was in session by virtue of the recess, it was, however, called in special session in spite of the fact that the work for which it was convened had not been terminated.

That the Governor vetoed the following bills approved by
19 both Houses:

Creating a grand-jury system.

For the establishment of the People's Bank.

To promote the credit of the coffee industry.

To amend Section 178 of the Code of Criminal Procedure, by granting jury trials in some misdemeanor cases.

The resolution petitioning the Congress of the United States to extend to Porto Rico the rural credits and trade educational acts.

HENRY W. DOOLEY would testify concerning a letter which was sent from San Juan to Hon. F. C. Roberts on April 17, 1918, preferring special charges against Governor Yager, saying, among other things, that "no doubt he is not the man of the hour." In order to avoid copying the letter, we offer it in evidence separately, it having been published in "Justicia" on May 25, 1918.

The defense further says that counting upon the presence of witnesses Epifanio Fiz, Ramon Barrios and Santiago Iglesias, the last-named being absent in the United States but was expected to be in Porto Rico about this time, we deem his testimony necessary and it would be as follows:

EPIFANIO FIZ and RAMON BARRIO: Not having time to copy the report made by them and published in "Justicia" on April 20, 1918, we offer it separately also.

They would testify also as to a telegram sent to Senator Santiago Iglesias informing him that a high official of the Fajardo Sugar Co. knew of a communication of the Governor to the Executive Committee of the Federation two hours before this Committee reported, the telephone message notifying Mr. Bird that the Governor's letter was favorable to them.

SANTIAGO IGLESIAS: As may be seen, this witness is connected with nearly all of the foregoing evidence and furthermore he could testify as to the charges preferred by him against Governor Yager to President Wilson through Mr. Gompers, the President of the American Federation of Labor. He witnessed also the attitude taken by the said Institution at the last Convention when said Iglesias attended and at which also a resolution was adopted asking for the removal of Governor Yager and that Porto Rico be separated from the Bureau of Insular Affairs and annexed to the Department of Interior and that a committee be appointed to investigate the general conditions of the country, which committee has been recently appointed and whose decision, and we understand that its report should be awaited before proceeding to this trial.

Wherefore, we pray this court to continue the trial of this case until the next term.

Arecibo, Porto Rico, July 29, 1918.

(Sd.) JOSÉ DE JESÚS TIZOL.

I, José de Jesus Tizol, attorney-at-law with an office in San Juan, under oath declare:

1. That I am the attorney in this case and have made the foregoing motion.

2. That the facts therein stated are true.

(Sd.) JOSÉ DE JESÚS TIZOL.

Sworn to and subscribed before me this 29th day of July, 1918, by attorney José de Jesus Tizol, of age, whom I personally know.

(Sd.) MANUEL L. CORBET,
Clerk.

Filed in my office this 29th day of July, 1918.

(Sd.) MANUEL L. CORBET,
Clerk.

Attention is hereby called to the fact that defendant Jesus M. Balzac is temporarily at liberty under bail furnished by him.

I, Manuel L. Corbet, Clerk of the District Court for the
21 Judicial District of Arecibo, P. R., do hereby certify that the foregoing is a true and exact copy of the original as it appears of record in the court in criminal case No. 881 brought by The People of Porto Rico against Jesus M. Balzac for libel, and to be forwarded to the Secretary of the Supreme Court of Porto Rico in compliance with section 356 of the Code of Criminal Procedure as amended by Act of March 7, 1908, I issue this copy under my signature and the official seal of the court, in the city of Arecibo, this 7th day of June, 1919.

(Sd.) MANUEL L. CORBET,
Clerk of the District Court of Arecibo, P. R.

In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

Opinion of the Court.

Delivered by Mr. Justice Del Toro.

San Juan, Porto Rico, March 4, 1920.

The reasoning contained in the Opinion of this Court delivered by Mr. Justice Wolf as a basis for the judgment just rendered in appeal No. 1416, People v. Balzac, are entirely applicable to this case.

Here also the language employed in the libelous publica-
22 tion is so abusive that we believe it would be improper to transcribe it. The court has examined it and considers that although the article does not directly name the Governor of Porto Rico, Arthur Yager, there is no doubt that it refers to him and so was understood by the witnesses, residents of the district of Arecibo,

who testified at the trial; that the entire publication tends to expose said Governor Yager to public hatred, contempt and ridicule; that defendant Balzac, who was the editor of the paper containing the said article, is responsible for the article and that is was published and circulated in said district of Arecibo; that Balzac has not shown that the charges contained in the said libelous article are true or that the article was published with good intentions and for justifiable purposes and, therefore, he was properly found guilty and sentenced by the District Court to four months' imprisonment.

In view of all the foregoing the appeal must be dismissed and the judgment appealed from affirmed.

(So.) EMILIO DEL TORO,
Associate Justice.

In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

Judgment.

San Juan, Porto Rico, March 4, 1920.

This court has considered the transcript of the record, the briefs filed by both parties and the oral argument of the appellee,
23 the only party who appeared at the hearing, and for the reasons set forth in the preceding opinion, as well as in the opinion in case No. 1416, decided on this date, it is held that the appeal should be dismissed and the judgment of the District Court of Arecibo of May 31, 1919, affirmed. Let this judgment, together with the opinion on which it is based, be communicated to the lower court.

Adjudged and signed by José C. Hernández, Adolph G. Wolf, Emilio del Toro, Pedro de Aldrey, H. M. Hutchison.

I, Joaquin Lopez Cruz, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify that the foregoing copies of the opinion and judgment agree with the originals; and in order to attach them to the proper record, I issue this copy in San Juan, Porto Rico, this 10th day of March, 1920.

(Sd.) JOAQUIN LOPEZ CRUZ,
Secretary-Reporter,
By FELIPE JANER, JR.,
Deputy Secretary.

In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

To the Honorable the Supreme Court:

Now comes defendant Jesus M. Balzac by his attorney Abraham Peña before this Hon. Court and respectfully shows:

That not being satisfied with the judgment rendered by this Court affirming the judgment of the District Court for the
21 Judicial District of Arecibo, he appeals to the Supreme Court of the United States in accordance with the right granted him by section 43 of the Organic Act for Porto Rico, and on the following two Constitutional grounds, to wit:

1st. Because the defendant has been denied the right granted him by the Sixth Amendment to the Constitution of the United States of being tried by a jury.

2nd. Because, in any event, if the law under which he was convicted and sentenced furnishes sufficient grounds therefore, it should be considered, by reason of its excessive harshness, as contrary to the letter and spirit of the First Amendment to the Constitution of the United States.

Therefore, the defendant prays this court to consider the said appeal as taken to the Supreme Court of the United States and allow it by such approval as may be proper.

San Juan, Porto Rico, March 11, 1920.

(Sd.) ABRAHAM PEÑA,
Attorney for Defendant and Appellant.

In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Libel.

Assignment of Errors.

Now comes the defendant-appellant, Jesus M. Balzac, by his undersigned attorney and files this assignment of errors on which
25 he bases his appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Porto

Rico of March 4, 1920, whereby the judgment of the District Court of Arecibo of the 31st of May, 1919, was affirmed.

The errors on which the defendant-appellant bases his appeal are as follows:

1. The Supreme Court of Porto Rico erred in dismissing the plea of the defendant-appellant that the said defendant was denied the right to be tried by a jury.

That right is set forth and recognized by the Sixth Amendment to the Constitution of the United States, and in this case a freeman has been deprived of he right to be tried by his peers.

2. The Supreme Court of Porto Rico erred in affirming the judgment of the District Court of Arecibo of May 31, 1919, sentencing the defendant to four months in jail for the crime of libel, which sentence the defendant considers excessive and severe and contrary to the spirit and letter of the First Amendment to the Constitution of the United States, inasmuch as he said crime of libel was commited at a historical moment of agitation and excitement in the country due to the agricultural strikes and the judgment might have been satisfied by only sentencing the defendant to pay a fine.

The above are the Assignments of Error that the appellant points out for the purposes of his appeal, which are respectfully submitted to this Supreme Court of Porto Rico.

San Juan, Porto Rica, March 12, 1920.

(Sd.) ABRAHAM PEÑA,
Attorney for Defendant-Appellant.

26 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

On Appeal to the Supreme Court of the United States.

Order.

San Juan, Porto Rico, March 20, 1920.

The appeal in the above-entitled cause is hereby allowed, the appellant being required to file a bond in the sum of One Thousand Dollars to remain in temporary liberty while the said appeal is pending, and also a bond in the sum of Three Hundred Dollars to answer for the costs that may be imposed upon him, the said bonds to be approved by the Chief Justice of this Court: and it is further

ordered that appellant file a Præcipe of the proceedings and papers to be included in the transcript on appeal, according to Rule 8 of the Supreme Court of the United States, the said documents to be translated into the English language and filed in the office of the Secretary of this Court within the period fixed by law, to be forwarded to the said Supreme Court of the United States.

The court so ordered it and the Chief Justice signs; attest.

(Sd.) JOSÉ C. HERNÁNDEZ,
Chief Justice.

" JOAQUIN LOPEZ,
Secretary-Reporter.

27 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Bond.

UNITED STATES OF AMERICA,
The President of the United States:

By these presents, We, Santiago Iglesias and Inés Rita Aybar de Peña, residents of the District of San Juan, are firmly and duly bound unto the People of Porto Rico in the sum of One Thousand Dollars ($1,000), to the payment of which well and truly to be made if appellant Jesus M. Balzac should fail to comply with the obligation hereinafter mentioned we not only bind ourselves jointly and severally by this instrument but also our heirs, executors and administrators.

Signed with our seals this nineteenth day of March, 1920.

The condition of the foregoing bond is as follows:

Whereas, attorney Abraham Peña has taken an appeal in behalf of defendant-appellant, Jesus M. Balzac, to the Supreme Court of the United States from the judgment rendered by the Supreme Court of Porto Rico on March 4, 1920, whereby the judgment of the District Court of Arecibo of the 31st of May, 1919, was affirmed, the said judgment sentencing the defendant to four months in jail.

28 Whereas, the said appeal has been allowed by an order of the 19th of March, 1920, wherein the Supreme Court of Porto Rico required a bond from the appellant in the sum of One Thousand Dollars for his temporary liberty while the said appeal is being considered and decided by the Supreme Court of the United States.

Therefore, by this bond we shall be held liable for the appearance of said Jesus M. Balzac before the Supreme Court of Porto Rico or before the District Court for the Judicial District of Arecibo and for his submission and obedience to any rules or orders that may be

made by any of said courts by reason of the said appeal, and also that the said Jesus M. Balzac shall appear in any of the aforesaid courts at the time and day on which he may be summoned to appear, in which case this obligation or bond shall be null and void; but if the said Jesus M. Balzac should fail to appear before any of the said courts and submit to the orders that may be rendered by such courts by reason of the appeal taken, this bond or obligation shall remain in full force and may be made effective.

(Sd.) SANTIAGO IGLESIAS.
INÉS R. A. DE PEÑA.

Signed before me by Santiago Iglesias and Inés R. A. de Peña, of age, property owners, residents of this city, to me personally known, in San Juan, P. R., this 19th day of March, 1920.

(Sd.) JOSÉ SOTO RIVERA,
Notary Public.

No. 223.

I, Santiago Iglesias, of this city, being duly sworn, say: That I am a resident of this city of San Juan; that I own real estate in the Municipality of San Juan of the value of more than One
29 Thousand and Two Hundred Dollars, exclusive of all lien thereon; that I pay taxes to the Treasury of Porto Rico of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesus M. Balzac I do so freely and without any mental reservation or purpose of evasion.

(Sd.) SANTIAGO IGLESIAS.

Sworn to and subscribed before me by Santiago Iglesias, of age, property owner, resident of this city, to me personally known, this 19th day of March, 1920.

[Notary's Seal.] (Sd.) JOSÉ SOTO RIVERA,
Notary Public.

Internal Revenue stamp of 25 cts., cancelled.

I, Inés R. Aybar de Peña, of this city, being duly sworn, say: That I am a resident of this city of San Juan; that I own real estate in the Municipality of Mayaguez of the value of more than One Thousand and Two Hundred Dollars ($1,200) exclusive of all liens thereon; that I pay taxes to the Treasury of Porto Rico of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesus M. Balzac I do so freely and without any mental reservation or purpose of evasion.

(Sd.) INÉS R. A. DE PEÑA.

30 No. 224.

Sworn to and subscribed before me by Inés R. Aybar de Peña, of age, property owner, resident of this city, to me personally known, in San Juan, P. R., this 19th day of March, 1920.

[Notary's Seal.] (Sd.) JOSÉ SOTO RIVERA,
Notary Public.

Internal Revenue stamp of 25 cts., cancelled.

In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Bond.

UNITED STATES OF AMERICA,
The President of the United States:

By these presents, We, Santiago Iglesias and Inés Rita Aybar de Peña, residents of the District of San Juan, are firmly and duly bound unto The People of Porto Rico in the sum of Three Hundred Dollars ($300), to the payment of which well and truly to be made if appellant Jesus M. Balzac should be sente-ced to pay the costs
31 in the appeal taken as hereinafter stated we not only bind ourselves jointly and severally by this instrument, but also our heirs, executors and administrators.

The condition of the foregoing obligation is as follows:

Whereas, attorney Abraham Peña has taken an appeal in behalf of defendant-appellant Jesús M. Balzac to the Supreme Court of the United States from the judgment rendered by the Supreme Court of Porto Rico on March 4, 1920, whereby the judgment of the District Court of Arecibo of May 31, 1919, was affirmed, the said judgment sentencing the defendant to four months in jail.

Whereas, the said appeal has been allowed by order of March 20, 1920, wherein the Supreme Court of Porto Rico also required a bond from the appellant in the sum of One Thousand Dollars for his temporary liberty and a bond of Three Hundred Dollars for the costs of the appeal.

Wherefore, by this bond we are held liable for the appearance of said Jesus M. Balzac before the Supreme Court of Porto Rico or the District Court for the Judicial District of Arecibo and for his submission and obedience to all rules and orders that may be made by the said courts by reason of the said appeal and for the payment by said defendant-appellant of any costs that he may be ordered to pay, in which case this obligation or bond shall be null and void, but if

said Jesus M. Balzac should fail to pay such costs this bond or obligation shall remain in full force and may be made effective.

(Sd.) INÉS R. A. DE PEÑA.
" SANTIAGO IGLESIAS.

Signed before me by Inés R. Albar de Peña and by Santiago Iglesias, of age, property owners, residents of this city, to me
32 personally known, in San Juan, Porto Rico, this — day of April, 1920.

——— ———,
Notary Public.

No. —.

I, Inés R. Aybar de Peña, of this city, being duly sworn, say: that I am a resident of this city of San Juan; that I own real estate in the Municipality of Mayaguez of the value of more than One Thousand and Two Hundred Dollars, exclusive of all liens thereon; that I pay taxes to the Treasury of Porto Rico, of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesus M. Balzac, I do so freely and without any mental reservation or purpose of evasion.

[Notary's Seal.] (Sd.) INÉS R. A. DE PEÑA.

Aff. 696.

Internal Revenue stamp of 25 cts., cancelled.

Sworn to and subscribed before me by Inés R. Aybar de Peña, of age, property owner, resident of this city, to me personally known, in San Juan, Porto Rico, this 7th day of April, 1920.

(Sd.) ANGEL R. DE JESÚS,
Notary Public.

33 I, Santiago Iglesias, of this city, being duly sworn, say: that I am a resident of this city of San Juan; that I own real estate in the Municipality of San Juan of the value of more than One Thousand and Two Hundred Dollars ($1,200) exclusive of all liens thereon; that I pay taxes to the Treasury of Porto Rico of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesus M. Balzac I do so freely and without any mental reservation or purpose of evasion.

(Sd.) SANTIAGO IGLESIAS.

No. 697.

Subscribed and sworn to before me by Santiago Iglesias, of age, property owner, resident of this city, to me personally known, in San Juan, Porto Rico, this — day of April, 1920.

[Notary's Seal.] (Sd.) ANGEL R. DE JESÚS,
Notary Public.

Internal Revenue stamp of 25 cts., cancelled.

34 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

Order.

San Juan, Porto Rico, April 8, 1920.

The bonds for One Thousand Dollars ($1,000) and Three Hundred Dollars ($300) respectively given by Santiago Iglesias and Inés Rita Aybar de Peña in the appeal taken by the defendant in the above-entitled cause having been considered, the same are approved; and it is ordered that while such appeal is pending the defendant be temporarily at liberty.

The court so ordered and the Chief Justice signs; attest.

(Sd.) JOSÉ C. HERNANDEZ,
Chief Justice.

" JOAQUIN LOPEZ,
Secretary-Reporter.

35 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

v.

JESÚS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

On Appeal to the Supreme Court of the United States.

Citation.

UNITED STATES OF AMERICA, *ss:*

To the People of Porto Rico, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the Supreme Court of Porto Rico, wherein Jesús M. Balzac is appellant and you are appellee, to show cause, if any there be, why

the judgment rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable José C. Hernández, Chief Justice of the Supreme Court of Porto Rico, this 13th day of April in the year of Our Lord one thousand nine hundred and twenty.

JOSÉ C. HERNÁNDEZ,
Chief Justice of the Supreme Court of Porto Rico.

Attest:

[Seal Supreme Court of Porto Rico, United States of America.]

JOAQUIN LOPEZ,
Secretary-Reporter of the
Supreme Court of Porto Rico.

Supreme Court of Porto Rico.

Marshal's Office.

Received this citation on its date and served the same by delivering personally a copy thereof to the Hon. Attorney General of Porto Rico, at San Juan, Porto Rico, this 14th day of April, 1920.

S. C. BOSTHNELL,
Marshal.

36 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Libel.

Præcipe for Record.

The Clerk of this Court is hereby requested to prepare a certified transcript of the record in the above-entitled cause for the use of the Supreme Court of the United States by including therein the following:

1. Information.
2. Judgment of the District Court of Arecibo, P. R.
3. Appeal to the Supreme Court of Porto Rico.
4. Statement of the Case.
5. Motion for continuance.
6. Opinion of the Supreme Court.

7. Judgment of the Supreme Court.
8. Appeal to the Supreme Court of the United States.
9. Assignment of Errors.
10. Order allowing appeal.
11. Bond for temporary liberty of defendant.
12. Bond for costs.
13. Order approving bonds.
14. Citation.
15. This Præcipe.
16. Notice of filing of Præcipe with proof of service.

San Juan, Porto Rico, July 28, 1920.

(Sd.) LCDO. ABRAHAM PEÑA,
Attorney for Defendant-Appellant.

37 No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Libel.

To Salvador Mestre,
Attorney General of Porto Rico:

Please take notice that on the 28th of July, 1920, the undersigned filed with the Clerk of this Court a Præcipe for the record to be transmitted to the Supreme Court of the United States on the appeal taken in the above cause, a copy of which Præcipe is hereby served on you.

Dated, San Juan, Porto Rico, ——.

(Sd.) LCDO. ABRAHAM PEÑA,
Attorney for Defendant-Appellant.

38 ISLAND OF PORTO RICO,
District of San Juan, ss:

I, Abraham Peña, being duly sworn, depose and say: that I am the attorney for the appellant herein; that on the 28th of July, 1920, I served a copy of the foregoing notice of filing and of the Præcipe therein referred to upon Salvador Mestre, Attorney General of Porto Rico, by delivering in his office, in San Juan, Porto Rico, true copies of said documents.

San Juan, Porto Rico.

(Sd.) LCDO. ABRAHAM PEÑA,
Attorney for Defendant-Appellant.

Subscribed and sworn to before me, this 28th day of July, 1920, by Abraham Peña, of full age, lawyer, and resident of San Juan, Porto Rico, to me personally known.

(Sd.) ANTONIO TRUJILLO GUIL.

Aff. No. 3206.

Internal Revenue stamp cancelled.

39 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Libel.

On Appeal to the Supreme Court of the United States.

Translator's Certificate.

I, Felipe Janer, Jr., official interpreter and translator of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this office.

In testimony whereof, I have signed this certificate in the city of San Juan, Porto Rico, this 20th day of October, 1920.

FELIPE JANER, JR.,
Interpreter and Translator of the Supreme Court of Porto Rico.

40 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

On Appeal to the Supreme Court of the United States.

Clerk's Certificate.

I, Joaquin Lopez Cruz, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above-entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant, according to the præcipe filed in my office by said appellant; I further certify that the translations of said papers and proceedings have been revised by the official interpreter and translator of this court, as shown by his certificate hereto attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the city of San Juan, Porto Rico, this 20th day of October, 1920.

JOAQUIN LOPEZ,
Secretary-Reporter of the Supreme Court of Porto Rico.

[One $10 and one $5 stamp, canceled.]

Endorsed on cover: File No. 28,001. Porto Rico Supreme Court. Term No. 179. Jesús M. Balzac, appellant, vs. The People of Porto Rico. Filed December 7th, 1920. File No. 28,001.

Office Supreme Court, U. S.
FILED
NOV 29 1921
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1921.

Nos. 178, 179.

JESUS M. BALZAC, APPELLANT,

vs.

THE PEOPLE OF PORTO RICO.

BRIEF FOR APPELLANT.

JACKSON H. RALSTON,
STANLEY D. WILLIS,
WM. T. RANKIN,
Attorneys for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

Nos. 178, 179.

JESUS M. BALZAC, APPELLANT,

vs.

THE PEOPLE OF PORTO RICO.

BRIEF FOR APPELLANT.

Statement of Facts.

The above cases are briefed together, being similar in fact and identical in principle.

In the first case, the appellant was indicted in the District Court of Arecibo, Porto Rico, May 31, 1918, charged with having libelled the then Governor of Porto Rico by the use of picturesque language, contained in an issue of a paper known as El Baluarte. The trial was entered upon on July 29, 1918, and, at its opening, the attorney for the defendant moved that he be allowed trial by jury. To this the District Attorney objected, on the ground that in libel cases it had been decided that the District Court had jurisdiction, and that it was plainly provided in the Penal Code that a trial by jury was not required in misdemeanor cases (Rec., p. 5). The motion was overruled on the ground that no right was conferred to a jury

trial in such cases under the criminal procedure of Porto Rico (Rec., p. 5). The action of the court was excepted to, but the trial proceeded, and, after the taking of the testimony, a conviction was had, and the defendant was sentenced to serve five months in jail and to pay costs (Rec., p. 3).

An appeal was taken to the Supreme Court of Porto Rico. The errors assigned, as appear from the opinion of the court (Rec., p. 17), included the contention of appellant that he was entitled to a jury trial, which contention the Supreme Court denied on authority of People of Porto Rico, et al. *vs.* Carlos Tapia, and People of Porto Rico *vs.* Jose Muratti, 245 U. S., 639.

From the action of the Supreme Court of Porto Rico an appeal was taken to this court.

The facts in No. 179 are to all intents and purposes identical with those above set forth as to No. 178, and a resume therefore need not be given.

Assignments of Error.

In each case the assignments of error upon which the appellant appears in this court are as follows:

> "1st. Because the defendant has been denied the right granted him by the Sixth Amendment to the Constitution of the United States of being tried by a jury.
>
> "2nd. Because, in any event, if the law under which he was convicted and sentenced furnishes sufficient grounds therefor, it should be considered, by reason of its excessive harshness, as contrary to the letter and spirit of the First Amendment to the Constitution of the United States."

ARGUMENT.

In this argument we shall not discuss the second assignment. We do not waive it but confine ourselves to calling attention to the fact that the language complained of did not exceed "exuberant expressions of meridional speech." (Grandia *vs.* Pittingill, 222 U. S., 452, 56 Law Ed., 267). Any punishment therefore is excessive and unwarranted.

Stress seems to have been laid in the courts below upon the fact that the offenses charged were only misdemeanors, and that, by the laws of Porto Rico, misdemeanors may not be the subject of jury trial. Claiming as we do the benefit of the Constitutional provisions, this argument can have no weight in this court. We need not go further than to refer to the case of Callan *vs.* Wilson, 127 U. S., 540, 556, wherein is cited with approval the decision of Mr. Justice Blatchford, then a member of the Supreme Court of the United States, who, sitting in a lower court, in Re Dana, 7 Benedict, p. 1, said:

> "Even if it were to be conceded, that notwithstanding the provision in the Constitution that 'the trial of all crimes, except in cases of impeachment,' shall be by jury, Congress has the right to provide for the trial, in the District of Columbia, by a court without a jury, of such offenses as were, by the laws and usages in force at the time of the adoption of the Constitution, triable without a jury, it is a matter of history, that the offense of libel was always triable and tried, by a jury."

With this introduction we may consider the question:

In the Territories of the United States is trial by jury under the Constitution obligatory?

The answer to this question, considering numerous decisions of this Honorable Court, must be in the

affirmative. This has been expressly decided in several cases under the 7th Amendment to the Constitution, as, for instance, Black *vs.* Jackson, 177 U. S., 349, a case arising in Oklahoma Territory; and the American Publishing Company *vs.* Fisher, 166 U. S., 464, coming up from the Territory of Utah. The territorial law providing for verdict in civil cases upon the concurrence of nine or more members of the jury was held invalid in the latter case, in that it constituted an infraction of the 7th Amendment to the Constitution of the United States.

The same doctrine has been held as to the 6th Amendment, applying to jury trials in criminal cases. In the case of Reynolds *vs.* United States, 98 U. S., 145, 167, arising in the then Territory of Utah, it was held by this Honorable Court, speaking through Chief Justice Waite, that:

> "By the Constitution of the United States (Amend. VI) the accused was entitled to a trial by an impartial jury."

It is instructive to note that in the same case another constitutional provision relating purely to procedure was referred to as being in full force and effect, for the court, referring to the absence of a witness, whose prior testimony was used, said:

> "The Constitution gives the accused a right to a trial at which he should be confronted with the witnesses against him."

The language of the above cases, therefore, offers no limit to the workings of the Constitution over any territory coming within the dominion of the United States, and such apparently was the idea of Chief

Justice Taney, as expressed in the case of Dred Scott *vs.* Sandford, 19 Howard, 393, 633, when he said:

> "Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel anyone to be a witness against himself in a criminal proceeding. . . . So, too, it will hardly be contended that Congress could by law quarter a soldier in a house in a territory without the consent of the owner, in time of peace; nor in time of war, but in a manner prescribed by law. Nor could they by law forfeit the property of a citizen in a territory who was convicted of treason, for a longer period than the life of the person convicted; nor take private property for public use without just compensation."

So, in the case of Thompson *vs.* State of Utah, 170 U. S., 343, 347, it was said:

> "It is equally beyond question that the provisions of the national Constitution relating to trials by jury for crimes and to criminal prosecutions apply to the Territories of the United States."

Of course, the same rule holds in the District of Columbia (Callan *vs.* Wilson, 127 U. S., 540).

We take it for granted that no particular form of words, and no particular act, is necessary to show that it is the intention of Congress to treat Porto Rico as incorporated into the United States. Thus in Capital Traction Co. *vs.* Hof, 174 U. S., 1, 43 L. Ed., 873, no reference whatever was made to any act extending the provisions of the Constitution to the District of Columbia and this Court treated the matter as beyond doubt. The same idea was at the foundation of the case of Callan *vs.* Wilson, elsewhere referred to.

In the case of Rasmussen *vs.* United States, 197 U. S., 516, 49 L. Ed., 862, after discussing the effect

of the treaty with Russia upon the inhabitants of Alaska, this Court found that Congress clearly contemplated the incorporation of Alaska into the United States, because of the provisions of the Act of July 20, 1868, concerning Internal Revenue taxation, and the Act of July 27, 1868, extending the laws of the United States relating to customs, commerce and navigation over Alaska, and establishing a collection district therein.

This intention of Congress was further evidenced by subsequent Acts of Congress not necessary to refer to. Hereafter, in this brief, we enumerate a great variety of statutes expressly extended to Porto Rico and clearly distinguishing between the position of Porto Rico and that of the Philippine Islands. It was not contended in the Rasmussen case, or elsewhere that we are aware, that there is any particular formula described to evidence the intention of Congress to extend the Constitution over new territories.

In Low *vs.* United States (U. S. C. C. A., Ohio), 169 Fed., 86, it was declared that there is no statute providing for trial by a federal court without a jury, excepting cases in equity or maritime jurisdiction or in bankruptcy, and that under Rev. St. Section 566, the trial of issues of fact in the District Court, save in the excepted cases, must be by jury. Also that under the provisions of Amendment 5 of the Constitution, a "crime" is not necessarily an infamous offense, but includes every offense of a serious or atrocious character, involving the possible infliction of a long imprisonment, *which offenses must be tried by a jury.* And it was so held in Frank *vs.* United States (U. S. C. C. A., Ohio), 192 Fed., 864, and likewise held that, if an offense amounting to a crime should not be tried by a jury, any judgment would be a nullity.

It was said in the case of Downes *vs.* Bidwell, 182 U. S., 244, 45 L. Ed., 1088, that the Constitution, in-

cluding the section under discussion, extends only to the United States and its organized Territories, and the question therefore arises:

Was Porto Rico such an organized territory of the United States at the time of the occurrences complained of as placed it under the 6th Amendment to the Constitution?

If Porto Rico were such an organized territory, then, beyond a peradventure, it was subject to section 1891 of the Revised Statutes of the United States, reading as follows:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States."

Historically, we may note that in the organic law controlling the Philippine Islands, being Act of 1902 providing for temporary civil government (32 Stat., 691, Chap. 1369) there was an express provision that Section 1891 of the Revised Statute should not apply to them (Dorr et al., *vs.* Unites States, 195 U. S., 138). When the Foraker Act (31 Stat., p. 77), which was the first organic act controlling Porto Rico, was passed, it was entirely silent with regard to the application of Section 1891, while it is significant that by its Section 35, writs of error and appeals from the final decisions of the Supreme Court of Porto Rico were allowed to the Supreme Court of the United States "In all cases where the Constitution of the United States, or a treaty thereof, or an Act of Congress is brought in question, and the right claimed thereunder is denied."

Other steps taken by Congress before the later act, comprehensively controlling Porto Rico, are significant

of a definite intent of Congress toward Porto Rico different from that usually manifested toward the Philippines. Thus:

(*a*) There was organized within the limits of Porto Rico a District Court of the United States, having the powers of the District and Circuit Courts of the United States. 31 Stat. L., 84, 7 Fed. Stat. Ann., 1273.

(*b*) Appeals and writs of error were allowed to the Supreme Court of the United States from the Supreme Court of Porto Rico in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress was brought in question and the right claimed thereunder denied. 31 Stat. L., 85, 7 Fed. St. Ann., 1275.

(To say that an appeal should be allowed in a case where the Constitution was called in question, and to say the Constitution nevertheless did not rule in Porto Rico, but that only a part of the Constitution obtained there, would seem to indulge in contradiction.)

(*c*) For about 20 years its regularly organized District Court of the United States has, pursuant to statute, like other courts in this country, received the reports of the Supreme Court. 32 Stat. L., 630, 5 Fed. St. Ann., 705.

(*d*) For about 17 years West Point Cadets and Annapolis Midshipmen have, pursuant to statute, attended their respective schools from Porto Rico. 32 Stat. L., 1011, 6 Fed. St. Ann., 420; 32 Stat. L., 1198, 6 Fed. St. Ann., 1018.

(*e*) For about 20 years United States stamps have been sold in Porto Rico. 34 Stat. L., 620, 7 Fed. St. Ann., 1285.

(*f*) For about 18 years the provisions of the Revised Statutes relative to statement of quality and value of goods clearing from the United States to foreign ports have extended to Porto Rico. 32 Stat. L., 172, 9 Fed. St. Ann., 303.

(*g*) For about 14 years the navigable waters of the United States and Porto Rico have been divided into five districts, of which Porto Rico is the second. 34 Stat. L., 190, 9 Fed. St. Ann., 321.

(*h*) For about 11 years the copyright statutes of the Union have been enforced by the District Courts of Porto Rico. 35 Stat. L., 1084, 2 Fed. St. Ann., 592.

(*i*) For 20 years the laws of the United States, not locally inapplicable, have been enforceable in Porto Rico by the regularly appointed agencies of the United States. 31 Stat. L., 80, 7 Fed. St. Ann., 1267.

(*j*) For 20 years the laws of the United States relative to the organization and powers of national banks have extended to Porto Rico. 23 Op. Atty Gen., 169.

(*k*) And likewise the immigration laws of the United States are in force and effect in Porto Rico. 24 Op. Att'y Gen., 86.

(*l*) For 9 years the Federal Employer's Liability Act has been applied to Porto Rico. American R. Co. *vs.* Birch, 224 U. S., 227 U. S., 145, 56 L. Ed., 879.

(*m*) And also the Federal Safety Appliance Act. American Railway Co. *vs.* Didricksen, 227 U. S., 145, 57 L. Ed., 456.

(*n*) Also the Federal Laws as to extradition, giving power to the governor of any organized territory, are extended to and in force in Porto Rico. New York *vs.* Bingham, 211 U. S., 468, 53 L. Ed., 286. And since March 2, 1917, see the Jones Act establishing local government in Porto Rico.

(*o*) By Act of March 3, 1919, a census of population, etc., is required to be taken by the Director of the Census in each State, the District of Columbia, Alaska, Hawaii and Porto Rico. The census is to be taken in other named territorial acquisitions in a different method than is provided for in the States and Organized Territories. Fed. St. Ann. Supp., 1919, p. 15.

(*p*) And the Federal Bankruptcy Acts are held to be in force and effective in Porto Rico, and to supersede the local laws on the same subject. In Re Vidal, 233 Fed., 733, 147 C. C. A., 499.

The Present Organic Law.

If, after the above enumeration, there could still remain any question as to whether Porto Rico has been formally placed under the jurisdiction of the United States Constitution, in the fullest manner possible, that question is, to our minds, absolutely answered by the existing organic law contained in "An Act to provide a civil government for Porto Rico and for other purposes," being the Act of March 2, 1917, Chapt. 145, 39 Stat. L., 951, Fed. St. Ann. Supp. for 1918, p. 607 (the Jones Act). In this connection it will be noted that the events complained of in these appeals occurred subsequent to the date upon which this act took effect, while in terms by its section 58, the prior laws not in conflict with its provisions were continued in effect, and all inconsistent laws repealed.

It is true that there is no express statement in this Act that the Constitution is in so many words extended to Porto Rico, but this becomes immaterial because unnecessary, as we have heretofore shown, and, in addition, upon consideration of sections to which we are about to allude. It is also true that there is contained in this Act a bill of rights for Porto Rico which does not expressly include right of trial by jury, but we are not claiming under any bill of rights of Porto Rico, but under the Constitution of the United States. The existence of a territorial bill of rights for Porto Rico does not negative the application of the Federal constitution any more than would the existence of State Bills of Rights.

The intention of Congress to incorporate Porto Rico

and its citizens into the body of American citizenship and possession is indicated in many sections of the act now referred to. There are two sections to which we desire to call particular attention. By Section 5 all citizens of Porto Rico, as defined by the Foraker Act, and this included all not disclaiming citizenship, in accordance with its provisions under the treaty with Spain, "are hereby declared and shall be deemed and held to be citizens of the United States." We omit the provisos which have no reference to the question before the court.

As if to demonstrate the intention of Congress, were it necessary, with still more clarity, we turn to Section 41 relating to the jurisdiction, etc., of the United States District Court and we find as follows: "The District Court for said District shall be called 'The District Court of the United States for Porto Rico.' " Further, reading Section 41, we find that this District Court "Shall have jurisdiction for the naturalization of aliens and Porto Ricans, and for this purpose residence in Porto Rico shall be counted in the same manner as residence *elsewhere in the United States.*" It further appears from the same section that the salaries of the judge and the officials of the District Court of the United States for Porto Rico, together with court expenses, are to be paid from the United States revenues, in the same manner as those of the other United States district courts.

We have before us cases in which the defendant, himself a citizen of Porto Rico, and made by statute a citizen of the United States, is dwelling within a jurisdiction where his rights are to be regarded, as specially stated in case of naturalization, with as great solicitude as are the rights of those resident "elsewhere in the United States," as the statute puts it.

Decisions Referred to in the Supreme Court of Porto Rico.

In the opinion of the court below (Rec., p. 17, of No. 178), reliance is had upon the decisions of this court in the case of People of Porto Rico *vs.* Carlos Tapia, and People of Porto Rico *vs.* Jose Muratti, 245 U. S., 639, and 62 L. Ed., pp. 525, 526. These cases seem to have special reference to the application of the 5th Amendment to the Constitution reading, as affecting this question, "no persons shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a grand jury," etc.

The opinions of this Honorable Court, in the cases named, were memorandum opinions, and it is fair to believe were rendered with reference to the conditions which prevailed prior to the passage of the Act of March 2, 1917, known as the Jones Act. Certainly, as would appear from the record in the Clerk's Office, the offenses charged were committed before the date of such act and before it was possible, apparently, for the legislature of Porto Rico to have provided for a grand jury. We may believe therefore that all of the considerations we have set forth in this brief were not reviewed by this court before the memorandum decisions were pronounced.

The opinion of the court below is evidently further based upon some idea that the offense of libel, not being a felony, and probably not infamous, the 6th Amendment to the Constitution, relative to right of trial by jury, was not applicable to Porto Rico; the Code of Criminal Procedure providing only for a jury trial in the case of a felony. In view of the statement of this Court in the case of Callan *vs.* Wilson, that, "It is a matter of history that the offense of libel was always triable and tried by jury," and the well understood law that the purpose of the Constitutional amendment

was to preserve the right of trial by jury as theretofore existing, it becomes a matter of absolute unimportance, in our view, whether, by the laws of Porto Rico, libel is called a felony or not.

We need not argue more than we have that libel is an offense particularly subject to trial by jury; that trial by jury is a constitutional right which in this case was claimed in due and ample time, and that therefore the decision of the Supreme Court of Porto Rico must be reversed.

Respectfully submitted,

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Attorneys for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

No. 178.

JESUS M. BALZAC, *Appellant*,
vs.
THE PEOPLE OF PORTO RICO.

No. 179.

JESUS M. BALZAC, *Appellant*,
vs.
THE PEOPLE OF PORTO RICO.

BRIEF FOR THE PEOPLE OF PORTO RICO, APPELLEE.

STATEMENT OF THE CASES.

In Case No. 178 the prosecuting attorney filed in the District Court of Arecibo, Porto Rico, on May 31, 1918, a sworn information against Jesus M. Balzac, charging him with the crime of libel (misdemeanor) as defined and punished in Sections 243 and 244 of the Penal Code of Porto Rico (R. 1–2). At 3:00 p. m., May 31, 1918, the appellant appeared in the District Court and after having been informed of the contents of the information as provided in Section 143 of the Code of Criminal Procedure of Porto Rico entered a plea of not guilty. When the case was called for trial on July 29, 1918, counsel for the appellant "moved orally that the defendant be allowed a trial by jury." The court overruled the motion on the ground "that no right is conferred to a jury trial in these cases

under our criminal procedure;" and on the further ground that even if the law granted trials by juries in misdemeanor cases the defendant "should have asked for it at the time of his arraignment, and not having done so it should be understood that he waived that right, as decided by the Supreme Court of Porto Rico in the case of *Ex Parte Torres*, 4 P. R. R., 146" (R. 4–5). Thereupon the trial was had, the appellant found guilty on July 29, 1918, and sentenced to imprisonment for five months in the district jail and to the payment of the costs of the cause (R. 3). On appeal to the Supreme Court of Porto Rico the judgment was affirmed on March 4, 1920 (R. 17–18).

In Case No. 179 an information was filed by the prosecuting attorney in the District Court of Arecibo, Porto Rico, on May 31, 1918, charging the appellant, Jesus M. Balzac, with the crime of libel (misdemeanor) as defined and punished in Sections 243 and 244 of the Penal Code of Porto Rico. The same proceedings were had in this case as in Case No. 178, and the defendant-appellant was found guilty and sentenced to imprisonment for four months and to the payment of the costs of the cause (R. 3). On appeal to the Supreme Court of Porto Rico the judgment was affirmed on March 4, 1920 (R. 14–15).

ASSIGNMENT OF ERRORS.

In each case the assignment of errors, upon which the appellant relies in this court, are as follows:

> "1st. Because the defendant has been denied the right granted him by the Sixth Amendment to the Constitution of the United States of being tried by a jury.
>
> "2nd. Because, in any event, if the law under which he was convicted and sentenced furnishes sufficient grounds therefor, it should be considered, by reason of its excessive harshness, as contrary to the letter and spirit of the First Amendment to the Constitution of the United States."

ARGUMENT.

The second assignment is not pressed in the argument. Counsel merely call the attention of the court to the case of *Grandia* v. *Pittingill*, 222 U. S. 452, and say that any punishment for the publication of the articles in question is excessive and unwarranted. Upon this point we think it sufficient to invite the attention of the court to that part of the opinions of the court below wherein the court said:

> "The article transcribed in the information in this case is so violent in its invective that we do not see fit to reproduce it for the purposes of our records" (Case No. 178).
>
> "Here also the language employed in the libelous publication is so abusive that we believe it would be improper to transcribe it" (Case No. 179).

The language complained of in each case *certainly* exceeds "exuberant expressions of meridional speech."

Before taking up the main question whether or not the appellant was entitled to jury trials, it might be well to inquire whether he waived such right, if it existed, by his failure to make his applications therefor in due time.

It is provided by the jury law of Porto Rico that a defendant is entitled to a jury in all cases of felony, provided he demands the same at the first general call of the calendar and his case is put upon the jury docket (Code of Criminal Procedure, Section 178). No demand was ever made on behalf of the appellant for jury trials, prior to or at the time of his arraignment, or for nearly two months thereafter, when his counsel came into court on the very day of the trials, July 29, 1918, and orally demanded jury trials, which were refused because the offenses of which he was accused were only misdemeanors, and not felonies, and moreover, because he had not demanded juries within the time prescribed by law, and therefore waived the right, if any he had. *Ex parte Torres*, 4 P. R. R. 147, 151; *Ex parte Bird*, 5 P. R. R., 505, 529.

Counsel for appellant, in opening their argument in support of the proposition that their client has been denied the right granted him by the Sixth Amendment to the Constitution of the United States of being tried by a jury, say:

> "Stress seems to have been laid in the courts below upon the fact that the offenses charged were only misdemeanors, and that, by the laws of Porto Rico, misdemeanors may not be the subject of jury trial. Claiming as we do the benefit of the Constitutional provisions, this argument can have no weight in this court. We need not go further than to refer to the case of *Callan* vs. *Wilson*, 127 U. S., 540, 556, wherein is cited with approval the decision of Mr. Justice Blatchford, then a member of the Supreme Court of the United States, who, sitting in a lower court, in Re Dana, 7 Benedict, p. 1, said:
>
> "'Even if it were to be conceded, that notwithstanding the provision in the Constitution that "the trial of all crimes, except in cases of impeachment," shall be by jury, Congress has the right to provide for the trial, in the District of Columbia, by a court without a jury, of such offenses as were, by the laws and usages in force at the time of the adoption of the Constitution, triable without a jury, it is a matter of history, that the offense of libel was always triable and tried, by a jury.'"

The pertinent provisions of the Penal Code of Porto Rico (Compilations of the Revised Statutes and Codes of Porto Rico, March 9, 1911, beginning on page 876) read as follows:

> "(5419) Sec. 13. Crimes are divided into: First, Felonies; and Second, Misdemeanors.
>
> "(5420) Sec. 14. A felony is a crime which is punishable with death or by imprisonment in the penitentiary. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the penitentiary is also punishable by fine or imprisonment in jail, in the discretion of the

court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the penitentiary.

"(5675) Sec. 243. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

"(5676) Sec. 244 (as amended by act of March 9, 1911, page 71). Every person who wilfully publishes or procures to be published any libel, or distributes or causes to be distributed any libelous matter in the form of leaflets, cards, or any other manner whatsoever, either printed or written, posting or causing them to be posted in any place, is punishable by fine not exceeding five thousand dollars, or imprisonment in jail for a term not exceeding two years, or both such fine and imprisonment, and also the costs of the action, in the discretion of the court."

At the time of the adoption and the going into effect of the Penal Code and the Code of Criminal Procedure of Porto Rico, Section 246 of the former and Section 264 of the latter provided that in all cases of libel the jury shall determine the law and the fact. But this was held, in *The People* v. *Bird*, 5 P. R. R., 387, 405, to go no further than whenever a jury may be provided for or allowed in a libel case, they shall "have the right to determine the law and the fact." This question was set at rest by the Act of March 10, 1904, which repealed the Jury Act in so far as it related to the trial of persons for libel. The benefits of the jury law were not extended to cases of libel or any other misdemeanor by the legislature of Porto Rico until ninety days after the approval, on July 22, 1919, of the Act amending Section 178 of the Code of Criminal Procedure. Tried by Section 14, *supra*, of the Penal

Code, the crime of which the appellant was convicted is clearly a misdemeanor, since the only punishment which could be inflicted is a fine and imprisonment in the public jail. We not only do not agree with counsel that "this argument can have no weight in this court," but urge that it is an absolutely determinative factor in these cases, because, as we will attempt to show later, the provisions of the Sixth Amendment to the Constitution of the United States are not applicable to Porto Rico and for this reason the case of *Callen* v. *Wilson, supra*, is not in point.

SIXTH AMENDMENT NOT IN FORCE IN PORTO RICO.

In case No. 178, the Supreme Court of Porto Rico said:

> "As we understand the decisions of the Supreme Court of the United States in the cases of *People of Porto Rico et al.* v. *Carlos Tapia* and *People of Porto Rico et al.* v. *Jose Muratti*, 245 U. S. 639, that part of the 6th Amendment of the Constitution of the United States giving a defendant in all criminal cases a right to trial by jury is not applicable to Porto Rico. Under the Code of Criminal Procedure a defendant is only entitled to a jury trial in cases of felony" (R. 17).

In respect to these cases, counsel for appellant say that "it is fair to believe (that the decisions) were rendered with reference to the conditions which prevailed prior to the passage of the Act of March 2, 1917, known as the Jones Act. Certainly, as would appear from the record in the Clerk's Office, the offenses charged were committed before the date of such Act and before it was possible, apparently, for the legislature of Porto Rico to have provided for a grand jury."

The judgments in the Tapia and Muratti cases were reversed on January 21, 1918, in *Per Curiam* opinions upon the authority of the cases cited in the first and without stating any of the facts or giving any additional reasons.

It is, therefore, necessary to state the facts briefly in order to understand the scope of these decisions.

Carlos Tapia was arrested, charged in an information filed by the Fiscal with a felony alleged to have been committed on March 15, 1917, within the jurisdiction of the District Court of San Juan, Porto Rico. Being held in confinement on that charge by order of the District Court of San Juan, he filed his petition for a writ of habeas corpus in the District Court of the United States for Porto Rico on April 10, 1917, seeking his release on the ground that he could not legally be held to answer that charge without a presentment or indictment by a grand jury as provided in the Fifth Amendment to the Constitution of the United States. After hearing, the United States District Judge held that the petitioner could not legally be brought to trial without an indictment by grand jury and ordered that if an indictment were not found against the petitioner by a certain date he will be released from confinement. From this order and judgment an appeal was taken direct to the Supreme Court of the United States (Transcript of Record).

Jose Muratti was charged in an information filed by the Fiscal on April 12, 1917, in the District Court of Mayaguez, Porto Rico, with the crime of murder in the second degree alleged to have been committed on the night of February 23, 1917. On the day of arraignment in the District Court of Mayaguez he presented a motion asking the court to annul or set aside the information because it was filed without a presentment or indictment by a grand jury in accordance with the Fifth Amendment to the Constitution of the United States. The motion was denied, and he, being held in confinement on said charge, thereupon moved the case into the Supreme Court of Porto Rico by means of a writ of certiorari where the question was heard and determined; that court, holding the plea good, annulled the information and all subsequent proceedings. This

case came direct to the Supreme Court of the United States on writ of error (see Transcript of Record).

Carlos Tapia was at the time of the application for the writ of habeas corpus in the custody of the authorities under a commitment of the judge of the District Court of San Juan to await trial for the alleged offense of assault with intent to murder, without any indictment having been found against him by a grand jury. Judge Hamilton of the District Court of the United States for Porto Rico held that "the point in the case, therefore, is whether under the Jones Act of March 2, 1917 (the present Organic Act of Porto Rico), Amendment V of the Constitution applies, requiring that 'no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury.'"

In the Muratti case Mr. Justice Wolf in delivering the opinion of the Supreme Court of Porto Rico stated: "The real question before the court is whether the Constitution of the United States is in full force and vigor in Porto Rico, and especially said Fifth Amendment." Both the District Court of the United States for Porto Rico and the Supreme Court of Porto Rico gave the question thorough consideration after an extensive investigation. Counsel for each side in each case in the Supreme Court of the United States presented elaborate briefs which likewise show thorough investigation and consideration. No question was left uncertain for failure to investigate it. This court after being fully advised reversed the judgment of the District Court of the United States for Porto Rico and the judgment of the Supreme Court of Porto Rico wherein it was expressly held that the prisoners, Carlos Tapia and Jose Muratti, could not be legally held to answer the crimes charged unless on a presentment or indictment of a grand jury.

In the Tapia case this court said:

> "Judgment reversed upon the authority of *Downes* v. *Bidwell*, 182 U. S. 244; *Hawaii* v.

Mankichi, 190 U. S. 197; *Dorr* v. *United States*, 195 U. S. 138; *Rassmussen* v. *United States*, 197 U. S. 516; *Kopel* v. *Bingham*, 211 U. S. 468; *Dowdell* v. *United States*, 221 U. S. 91; *Porto Rico* v. *Rosaly*, 227 U. S. 270, 274; *Ocampo* v. *United States*, 234 U. S. 91, 98."

In the Muratti case the court used this language:

> "Judgment reversed upon the authority of *People of Porto Rico* v. *Tapia*, just decided, *supra*, this page, and authorities therein cited."

An examination of the cases cited by this court as authority for the reversal of the judgments in the Tapia and the Muratti cases will disclose that the following propositions are clearly and firmly settled:

(a) The treaty-making power of the United States is devoid of authority to incorporate foreign territory into the United States without the assent, express or implied, of Congress;

(b) The Treaty of Paris not only contains no conditions for the incorporation of Porto Rico and the Philippines but expressly provides that the civil rights and political status of the native inhabitants shall be determined by Congress. Therefore, incorporation does not arise until in the wisdom of Congress it is deemed that the acquired territories have reached that state where it is proper that they should enter into and form a part of the American family.

(c) Those provisions of the Fifth and Sixth Amendments to the Constitution of the United States relating to indictments of grand juries and the right of trial by jury do not, without legislation and of their own force, extend to ceded territory not made a part of the United States by Congressional action;

(d) The requirement of an indictment by grand jury and the right to trial by jury are not fundamental rights which go of their own force wherever the jurisdiction of the United States extends and are

not included within the guaranty of "due process of law;"

(e) The test, and the only test, of whether or not ceded territory is incorporated, is the expression of the intent of Congress that it shall be incorporated. This has not been done in respect of Porto Rico and the Philippine Islands.

It having been settled past dispute that incorporation did not arise in the case of Porto Rico prior to the New Organic Act of March 2, 1917 (39 Stat. 951), we insist that the passage of that Act did not bring about such incorporation and that this must necessarily have been the conclusion reached by the court in disposing of the Tapia and Muratti cases, *supra*, because the judgments of reversal can rest upon no other grounds.

In support of this proposition attention is invited to the excellent briefs filed by Messrs. Howard L. Kern, Samuel T. Ansell, and Edward S. Bailey, Attorneys for The People of Porto Rico in the Tapia case on the merits, made applicable to the Muratti case, and in the Muratti case in support of the petition for certiorari.

The above-mentioned Attorneys for The People of Porto Rico in said cases stood squarely on the proposition that Tapia and Muratti could be legally held to answer for the crimes charged notwithstanding the fact that no presentment or indictment of a grand jury had been found against them because Porto Rico had not been incorporated into the United States by the Act of March 2, 1917, or by any prior or subsequent Congressional legislation. That Act was analyzed for the purpose of showing that Congress did not intend to incorporate Porto Rico by its passage. We desire to reproduce in substance some of the salient points set forth in those briefs.

Prior Acts of Congress contained no bill of rights for the people of Porto Rico. Section 2 of the Act of March 2, 1917, contains the first bill of rights enacted for Porto

Rico. This section consists of twenty-five paragraphs. All but seven of these paragraphs are copied practically word for word from the Constitution of the United States. Every *fundamental* right granted by the Constitution to an American citizen, or to any other person, is guaranteed to the people of Porto Rico by this bill of rights. The right to a presentment or indictment of a grand jury, secured by the Fifth Amendment, and the right to a trial by a jury in criminal cases, secured by the Sixth Amendment, are not given by the Porto Rican bill of rights. These rights are not fundamental in their nature but merely concern a method of procedure. If the Act of March 2, 1917, incorporated Porto Rico, then practically the entire bill of rights contained in Section 2 was useless, since the same rights would be granted directly by the Constitution itself.

Section 9 of the Act of March 2, 1917, in providing for the application of the statutory laws of the United States in Porto Rico, with certain execptions, makes no reference whatever to the Constitution. Section 40 provides that the jurisdiction of the Porto Rican Courts and "*the form of procedure in them,*" shall continue to be as now provided until otherwise provided by law. Under the authority of the case of *Rassmussen* v. *United States*, 197 U. S. 516, it is clear that Congress could not lawfully continue in force in Porto Rico the established criminal procedure if the Island were made an incorporated territory by that Act. Section 2 empowers the President or the Governor of Porto Rico to suspend the privilege of the writ of *habeas corpus* in case of rebellion, insurrection, or invasion whenever the necessity for such suspension shall exist, while in the absence of express legislative authority the President is without power to suspend the privilege of the writ as provided by the Constitution.

The basis of the decision of the Supreme Court of Porto Rico in the Muratti case was the grant of collective citizen-

ship to the Porto Ricans. In speaking of the argument presented on behalf of The People of Porto Rico the court said:

> "Indeed, were it not for the grant of citizenship in the Jones Act, the contention of the Attorney General, under the authorities would have to prevail, but collective citizenship was granted to the inhabitants of Porto Rico by the Jones Act."

While it will thus be seen that the Supreme Court of Porto Rico held that the grant of collective citizenship was not merely an *indicia* of an intent to incorporate but constituted in fact incorporation itself, it was urged that the grant, so far from amounting to incorporation, was a strong *indicia* of Congressional intent not to incorporate.

Section 5 of the New Organic Act of March 2, 1917, provides that "*all citizens of Porto Rico*, as defined by the Act of April 12, 1900," and all natives falling within the designated class, "are hereby declared, and shall be deemed and held to be, citizens of the United States: *Provided*, That any person hereinbefore described *may retain his present political status* by making a declaration, * * *." Under this section a person may be a citizen of Porto Rico and not a citizen of the United States. The cases cited in the briefs heretofore mentioned and to which the attention of the court has been invited hold that *a citizen of a State or an incorporated Territory is ipso facto a citizen of the United States. No one can be the former without also being the latter.* The reason why this is true arises from the nature of citizenship under the American system of government. A citizen is a constituent member of the United States government, and all the citizens *form the sovereignty* and hold the power and conduct the government through their representatives. "They are," say the court in *Boyd* v. *Thayer*, 143 U. S. 135, 159, "what we familiarly call the 'sovereign people' and every citizen is

one of this people, and a constituent member of this sovereignty."

It makes no difference whether or not any person or persons have taken advantage of the right given by the Act to renounce American citizenship and retain Porto Rican citizenship. The important fact is that Congress has recognized that a person may be a citizen of Porto Rico without being a citizen of the United States, and since this is true it is impossible for Porto Rico to have been incorporated into the United States.

The result is that the New Organic Act (the Act of March 2, 1917) *clearly shows an affirmative Congressional intent that Porto Rico should not be incorporated into the United States.*

Porto Rico is different from Alaska. In the granting of citizenship to the inhabitants of Alaska there was no provision by which the inhabitants of that territory could retain a status as citizens of Alaska and not be citizens of the United States. The case of *Rassmussen* v. *United States, supra,* chiefly relied upon by Tapia and Muratti, is cited by this court as authority for the reversal of those judgments.

The mere grant of collective or individual citizenship to the North American Indians did not of itself show an intent on the part of Congress to do away with or change the relations existing between the Federal Government and the Indians. *Tiger* v. *Western Investment Company,* 221 U. S., 286. In *United States* v. *Celestine,* 215 U. S. 278, it was held that the United States was not deprived of exclusive jurisdiction to try an Indian for an alleged crime committed by him upon an Indian reservation by reason of the fact that the Indian was a citizen of the United States.

The Constitution of the United States is territorial and not personal in its operation. An American citizen while outside the incorporated limits of the United States, although

he is tried by a tribunal constituted under authority of an act of Congress, is not entitled to either a presentment or indictment by a grand jury or to be tried by a jury. On the other hand, a foreigner in the United States is entitled to these rights, not because he is a citizen of the United States, but because he is within the territory governed by the Constitution. *In re Ross*, 140 U. S., 453; *Dorr* v. *United States*, 195 U. S. 138.

The contention of counsel, set forth in the last paragraph of their brief, "that libel is an offense particularly subject to trial by jury," has no application in Porto Rico. No one in Porto Rico is entitled as of right to a trial by jury in any case. The matter is entirely in the hands of the local authorities.

The judgments in these cases, being as they are strictly in accordance with the law and the merits, should be affirmed with costs.

Respectfully submitted,

GRANT T. TRENT,
Lieutenant-Colonel, Judge Advocate,
Attorney for Appellee.

Of Counsel,
ARTHUR W. BEER,
Captain, Judge Advocate.

denied.

BALZAC *v.* PEOPLE OF PORTO RICO.

ERROR TO THE SUPREME COURT OF PORTO RICO.

Nos. 178, 179. Argued March 20, 1922.—Decided April 10, 1922.

1. The Act of January 28, 1915, c. 22, 38 Stat. 803, amending § 246 of the Judicial Code, and providing that writs of error from this court may be prosecuted to the supreme courts of Porto Rico and Hawaii in the same classes of cases as to the courts of last resort of the States under Jud. Code, § 237, meant to assimilate the jurisdiction over those territorial courts to that over the state courts and is to be construed as embracing subsequent changes in § 237 not obviously inapplicable, such as the amendments made by the Act of September 6, 1916, c. 448, 39 Stat. 726. P. 300.
2. In prosecutions for criminal libel in a district court of Porto Rico, defendant demanded a jury under the Sixth Amendment, which was denied him upon a construction of local statutes, applicable to this and other misdemeanors. *Held*, that the demand drew in question the validity of the statutes, within the meaning of Jud. Code, § 237, as amended in 1916, and that judgments of the Supreme Court of Porto Rico affirming the convictions were reviewable here by writ of error. P. 302.
3. To present the constitutionality of a statute, it is not essential that an assignment of error should mention the statute in question, if the record definitely shows that its constitutionality was questioned and the assignment is clearly directed to that controversy. P. 303.
4. The provisions of the Constitution guaranteeing jury trial in all criminal prosecutions do not apply to a territory belonging to the

United States which has not been incorporated into the Union; and Porto Rico was not so incorporated by the Act of April 12, 1900, c. 191, 31 Stat. 77, which gave it a temporary government. P. 304. *Dorr* v. *United States*, 195 U. S. 138.

5. The Organic Act for Porto Rico of March 2, 1917, c. 145, 39 Stat. 951, known as the Jones Act, did not have the effect of incorporating Porto Rico into the United States. P. 305.
6. Since the Spanish War, an intention of Congress to incorporate new territory into the Union is not to be admitted without express declaration or an implication so strong as to exclude any other view. P. 306.
7. The provisions of § 5 of the Organic Act, *supra*, for extending federal citizenship to citizens and certain residents of Porto Rico, did not extend the jury system there. P. 307.
8. Neither can incorporation into the United States be implied from the organization of the United States District Court in Porto Rico, allowance of review of cases from its Supreme Court involving the Constitution, admission of Porto Ricans to the Military and Naval Academies, sale of United States stamps in the Island, or extension to it of federal revenue, navigation, banking, bankruptcy, employers' liability, safety appliance, extradition and census laws. P. 311.
9. Published reflexions on the Governor of Porto Rico, *held* libelous and not legitimate comment protected by the guaranty of free speech and free press in the First Amendment of the Constitution. P. 314.

28 P. R. 139, 141 affirmed.

REVIEW of two judgments of the Supreme Court of Porto Rico which affirmed judgments of the District Court for Arecibo imposing sentences to imprisonment based on convictions of criminal libel.[1]

Mr. Jackson H. Ralston, with whom *Mr. Stanley D. Willis* and *Mr. Wm. T. Rankin* were on the brief, for Balzac.

Mr. Grant T. Trent, with whom *Mr. Arthur W. Beer* was on the brief, for Porto Rico.

[1] The records were brought up in the form of appeals but are treated as here on writ of error.

MR. CHIEF JUSTICE TAFT delivered the opinion of the court.

These are two prosecutions for criminal libel brought against the same defendant, Jesus M. Balzac, on informations filed in the District Court for Arecibo, Porto Rico, by the District Attorney for that District. Balzac was the editor of a daily paper published in Arecibo, known as "El Baluarte", and the articles upon which the charges of libel were based were published on April 16 and April 23, 1918, respectively. In each case the defendant demanded a jury. The code of criminal procedure of Porto Rico grants a jury trial in cases of felony but not in misdemeanors. The defendant, nevertheless, contended that he was entitled to a jury in such a case, under the Sixth Amendment to the Constitution, and that the language of the alleged libels was only fair comment and their publication was protected by the First Amendment. His contentions were overruled, he was tried by the court and was convicted in both cases and sentenced to five months' imprisonment in the district jail in the first, and to four months in the second, and to the payment of the costs in each. The defendant appealed to the Supreme Court of Porto Rico. That court affirmed both judgments. *People* v. *Balzac*, 28 P. R. 139, Second Case, 28 P. R. 141.

The first question in these cases is one of jurisdiction of this court. By § 244 of the Judicial Code, approved March 3, 1911, it was provided that writs of error and appeals from the final judgments and decrees of the Supreme Court of Porto Rico might be prosecuted to this court in any case in which was drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, or wherein the Constitution of the United States, or a treaty thereof, or an act of Congress was brought in question and the right claimed thereunder was denied, and this without regard to the

amount involved. By the Act of January 28, 1915, c. 22, 38 Stat. 803, § 244 of the Judicial Code was repealed, but § 246 was amended and made to apply to the appellate jurisdiction of this court in respect to the decisions of the Supreme Court not only of Hawaii, as before, but also Porto Rico, and it was provided that writs of error to those courts from this court could be prosecuted in the same class of cases as those in which this court was authorized under § 237 of the Judicial Code to review decisions of state courts of last resort. Section 237 at that time allowed a writ of error to final decisions in state courts of last resort where was drawn in question the validity of a treaty, or a statute of, or an authority exercised under, the United States, and the decision was against its validity; or where was drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of its validity; or where any title, right, privilege or immunity was claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege or immunity especially set up or claimed by either party under such Constitution, treaty, statute, commission or authority. By Act of January 28, 1915, 38 Stat. 803, 804, amending § 246, this court was given power by certiorari to bring up for review all final judgments or decrees in civil or criminal cases in the supreme courts of Porto Rico and Hawaii, other than those reviewable here by writ of error because in the class similar to that described in § 237 of the Judicial Code. By Act of September 6, 1916, c. 448, 39 Stat. 726, the jurisdiction of this court to review by writ of error, under § 237, final judgments and decrees of state courts of last resort was cut down by omitting cases (other than those involving the validity of

a treaty, statute or authority exercised under the United States or any State) wherein a title, right, privilege, or immunity, was claimed under the Constitution, or any treaty or statute of, or commission held, or authority exercised under, the United States, and the decision was against such title, right, privilege or immunity, and such cases, it was provided, could only be examined on review in this court by certiorari.

The question now presented is whether the amendment to § 237 of the Judicial Code by the Act of 1916 applies to, and affects, the appellate jurisdiction of this court in reviewing decisions of the Supreme Court of Porto Rico. We think it does. We think that the manifest purpose of the Act of 1915, amending § 246 of the Code, in its reference to § 237 of the Judicial Code, was to assimilate the appellate jurisdiction of this court over the supreme courts of Porto Rico and Hawaii to that over state courts of last resort, and that the reference in amended § 246 to § 237 may be fairly construed to embrace subsequent changes in § 237 that are not obviously inapplicable.

This brings us to the question whether there was drawn in question in these cases the validity of a statute of Porto Rico under the Constitution of the United States. The Penal Code of Porto Rico divides crimes into felonies and misdemeanors. (Rev. Stats. and Codes of Porto Rico, 1911, Penal Code, § 13.) A felony is described as a crime punishable by death or by imprisonment in the penitentiary. Every other crime is declared to be a misdemeanor. Penal Code, § 14. Section 178 of the Porto Rican Code of Criminal Procedure provided that issues of fact in cases of felony should be tried by a jury when the defendant so elected, but gave no such right in the case of misdemeanors. This was construed by the Supreme Court to deny such right. *People* v. *Bird*, 5 P. R. 387.

By § 244 (5676) of the Penal Code (as amended by Act of March 9, 1911, p. 71), the publication of a libel is made

punishable by a fine not exceeding $5,000, or imprisonment in jail for a term not exceeding two years, or both such fine and imprisonment, and also the costs of the action in the discretion of the court. It is, therefore, plain that libel under the Porto Rican law is a misdemeanor, and a jury trial was not required therein. By the Act of July 22, 1919 (Laws of Porto Rico, 1919, No. 84, p. 684), a jury trial is now given in misdemeanors, but that did not come into force until after these libels were published and these trials had.

When the Penal Code and the Code of Criminal Procedure were first passed in 1901, they both contained the provision that in all cases of libel the jury should determine the law and the fact. It was held, however, by the Supreme Court of Porto Rico in *People* v. *Bird*, 5 P. R. 387, 405, that this did not give a jury trial but only made provision that, if and when a right of jury trial was given in such cases, the jury should have the power to determine the law and the fact. Thereafter the Act of March 10, 1904 (Laws of Porto Rico, 1904, p. 130), expressly repealed all reference to trials for libel in the jury act.

The effect of the Penal Code of Procedure, as construed by the Supreme Court of Porto Rico, and of the Act of March 10th, repealing the jury act as to libel cases, was a statutory denial of the right of jury trial in such cases. A demand for a jury trial in this case, therefore, drew in question the validity of the statutes upon which the court relied in denying the demand. This necessarily leads to the conclusion that these cases are in the same class as those which come to this court by writ of error under § 237, as amended by the Act of 1916, and that jurisdiction by writ of error exists.

Was the issue properly saved in the record by the defendant? We think it was. The demand for a jury trial, the statute to the contrary notwithstanding, was made at the trial. It was renewed in the assignments of error in

the Porto Rican Supreme Court and here. Those assignments did not mention the statutes whose validity was involved, but merely averred that the defendant had been denied his right as an American citizen under the Sixth Amendment to the Constitution. While this is informal, we think that it is sufficient when the record discloses the real nature of the controversy and the specification of the assignment leaves no doubt that it is directed to that controversy.

We have now to inquire whether that part of the Sixth Amendment to the Constitution, which requires that, in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, applies to Porto Rico. Another provision on the subject is in Article III of the Constitution providing that the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but, when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed. The Seventh Amendment of the Constitution provides that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. It is well settled that these provisions for jury trial in criminal and civil cases apply to the Territories of the United States. *Webster* v. *Reid*, 11 How. 437, 460; *Reynolds* v. *United States*, 98 U. S. 145, 167; *Callan* v. *Wilson*, 127 U. S. 540, 556; *American Publishing Co.* v. *Fisher*, 166 U. S. 464; *Thompson* v. *Utah*, 170 U. S. 343, 347; *Capital Traction Co.* v. *Hof*, 174 U. S. 1; *Black* v. *Jackson*, 177 U. S. 349; *Rassmussen* v. *United States*, 197 U. S. 516, 528; *Gurvich* v. *United States*, 198 U. S. 581. But it is just as clearly settled that they do not apply to territory belonging to the

United States which has not been incorporated into the Union. *Hawaii* v. *Mankichi,* 190 U. S. 197; *Dorr* v. *United States,* 195 U. S. 138, 145. It was further settled in *Downes* v. *Bidwell,* 182 U. S. 244, and confirmed by *Dorr* v. *United States,* 195 U. S. 138, that neither the Philippines nor Porto Rico was territory which had been incorporated in the Union or become a part of the United States, as distinguished from merely belonging to it; and that the acts giving temporary governments to the Philippines, 32 Stat. 691, and to Porto Rico, 31 Stat. 77, had no such effect. The *Insular Cases* revealed much diversity of opinion in this court as to the constitutional status of the territory acquired by the Treaty of Paris ending the Spanish War, but the *Dorr Case* shows that the opinion of Mr. Justice White of the majority, in *Downes* v. *Bidwell,* has become the settled law of the court. The conclusion of this court in the *Dorr Case,* p. 149, was as follows:

"We conclude that the power to govern territory, implied in the right to acquire it, and given to Congress in the Constitution in Article IV, § 3, to whatever other limitations it may be subject, the extent of which must be decided as questions arise, does not require that body to enact for ceded territory, not made a part of the United States by Congressional action, a system of laws which shall include the right of trial by jury, and that the Constitution does not, without legislation and of its own force, carry such right to territory so situated."

The question before us, therefore, is: Has Congress, since the Foraker Act of April 12, 1900, c. 191, 31 Stat. 77, enacted legislation incorporating Porto Rico into the Union? Counsel for the plaintiff in error give, in their brief, an extended list of acts, to which we shall refer later, which they urge as indicating a purpose to make the Island a part of the United States, but they chiefly rely on the Organic Act of Porto Rico of March 2, 1917, c. 145, 39 Stat. 951, known as the Jones Act.

The act is entitled " An Act To provide a civil government for Porto Rico, and for other purposes." It does not indicate by its title that it has a purpose to incorporate the Island into the Union. It does not contain any clause which declares such purpose or effect. While this is not conclusive, it strongly tends to show that Congress did not have such an intention. Few questions have been the subject of such discussion and dispute in our country as the status of our territory acquired from Spain in 1899. The division between the political parties in respect to it, the diversity of the views of the members of this court in regard to its constitutional aspects, and the constant recurrence of the subject in the Houses of Congress, fixed the attention of all on the future relation of this acquired territory to the United States. Had Congress intended to take the important step of changing the treaty status of Porto Rico by incorporating it into the Union, it is reasonable to suppose that it would have done so by the plain declaration, and would not have left it to mere inference. Before the question became acute at the close of the Spanish War, the distinction between acquisition and incorporation was not regarded as important, or at least it was not fully understood and had not aroused great controversy. Before that, the purpose of Congress might well be a matter of mere inference from various legislative acts; but in these latter days, incorporation is not to be assumed without express declaration, or an implication so strong as to exclude any other view.

Again, the second section of the act is called a " Bill of Rights ", and included therein is substantially every one of the guaranties of the Federal Constitution, except those relating to indictment by a grand jury in the case of infamous crimes and the right of trial by jury in civil and criminal cases. If it was intended to incorporate Porto Rico into the Union by this act, which would *ex proprio vigore* make applicable the whole Bill of Rights

of the Constitution to the Island, why was it thought necessary to create for it a Bill of Rights and carefully exclude trial by jury? In the very forefront of the act is this substitute for incorporation and application of the Bill of Rights of the Constitution. This seems to us a conclusive argument against the contention of counsel for the plaintiff in error.

The section of the Jones Act which counsel press on us is § 5. This in effect declares that all persons who under the Foraker Act were made citizens of Porto Rico and certain other residents shall become citizens of the United States, unless they prefer not to become such, in which case they are to declare such preference within six months, and thereafter they lose certain political rights under the new government. In the same section the United States District Court is given power separately to naturalize individuals of some other classes of residents. We set out the section in full in the margin.[1] Unaffected by the con-

[1] Sec. 5. That all citizens of Porto Rico, as defined by section seven of the Act of April twelfth, nineteen hundred, "temporarily to provide revenues and a civil government for Porto Rico, and for other purposes", and all natives of Porto Rico who were temporarily absent from that island on April eleventh, eighteen hundred and ninety-nine, and have since returned and are permanently residing in that island, and are not citizens of any foreign country, are hereby declared, and shall be deemed and held to be, citizens of the United States: *Provided*, That any person hereinbefore described may retain his present political status by making a declaration, under oath, of his decision to do so within six months of the taking effect of this Act before the district court in the district in which he resides, the declaration to be in form as follows:

"I, ..., being duly sworn, hereby declare my intention not to become a citizen of the United States as provided in the Act of Congress conferring United States citizenship upon citizens of Porto Rico and certain natives permanently residing in said island."

In the case of any such person who may be absent from the island during said six months the term of this proviso may be availed of by transmitting a declaration, under oath, in the form herein provided

siderations already suggested, perhaps the declaration of § 5 would furnish ground for an inference such as counsel for plaintiff in error contend, but under the circumstances we find it entirely consistent with non-incorporation. When Porto Ricans passed from under the government of Spain, they lost the protection of that government as subjects of the King of Spain, a title by which they had been known for centuries. They had a right to expect, in passing under the dominion of the United States, a status entitling them to the protection of their new sovereign. In theory and in law, they had it as citizens of Porto Rico, but it was an anomalous status, or seemed to be so in view of the fact that those who owed and rendered allegiance to the other great world powers were given the same designation and status as those living in their respective home countries so far as protection against foreign injustice went. It became a yearning of the Porto Ricans to be American citizens, therefore, and this act gave them the boon. What additional rights did it give them? It enabled them to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social and political. A citizen of the Philippines must be naturalized before he can settle and vote in this country. Act of June 29, 1906, c. 3592, § 30, 34 Stat. 606. Not so the Porto Rican under the Organic Act of 1917.

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within six months of the taking effect of this Act to the executive secretary of Porto Rico: *And provided further*, That any person who is born in Porto Rico of an alien parent and is permanently residing in that island may, if of full age, within six months of the taking effect of this Act, or if a minor, upon reaching his majority or within one year thereafter, make a sworn declaration of allegiance to the United States before the United States District Court for Porto Rico, setting forth therein all the facts connected with his or her birth and residence in Porto Rico and accompanying due proof thereof, and from and after the making of such declaration shall be considered to be a citizen of the United States.

In Porto Rico, however, the Porto Rican can not insist upon the right of trial by jury, except as his own representatives in his legislature shall confer it on him. The citizen of the United States living in Porto Rico can not there enjoy a right of trial by jury under the Federal Constitution, any more than the Porto Rican. It is locality that is determinative of the application of the Constitution, in such matters as judicial procedure, and not the status of the people who live in it.

It is true that, in the absence of other and countervailing evidence, a law of Congress or a provision in a treaty acquiring territory, declaring an intention to confer political and civil rights on the inhabitants of the new lands as American citizens, may be properly interpreted to mean an incorporation of it into the Union, as in the case of Louisiana and Alaska. This was one of the chief grounds upon which this court placed its conclusion that Alaska had been incorporated in the Union, in *Rassmussen* v. *United States,* 197 U. S. 516. But Alaska was a very different case from that of Porto Rico. It was an enormous territory, very sparsely settled and offering opportunity for immigration and settlement by American citizens. It was on the American Continent and within easy reach of the then United States. It involved none of the difficulties which incorporation of the Philippines and Porto Rico presents, and one of them is in the very matter of trial by jury. This court refers to the difficulties in *Dorr* v. *United States,* 195 U. S. 138, 148:

"If the right to trial by jury were a fundamental right which goes wherever the jurisdiction of the United States extends, or if Congress, in framing laws for outlying territory belonging to the United States was obliged to establish that system by affirmative legislation, it would follow that, no matter what the needs or capacities of the people, trial by jury, and in no other way, must be forthwith established, although the result may be to work injustice

and provoke disturbance rather than to aid the orderly administration of justice. . . . Again, if the United States shall acquire by treaty the cession of territory having an established system of jurisprudence, where jury trials are unknown, but a method of fair and orderly trial prevails under an acceptable and long-established code, the preference of the people must be disregarded, their established customs ignored and they themselves coerced to accept, in advance of incorporation into the United States, a system of trial unknown to them and unsuited to their needs. We do not think it was intended, in giving power to Congress to make regulations for the territories, to hamper its exercise with this condition."

The jury system needs citizens trained to the exercise of the responsibilities of jurors. In common-law countries centuries of tradition have prepared a conception of the impartial attitude jurors must assume. The jury system postulates a conscious duty of participation in the machinery of justice which it is hard for people not brought up in fundamentally popular government at once to acquire. One of its greatest benefits is in the security it gives the people that they, as jurors actual or possible, being part of the judicial system of the country can prevent its arbitrary use or abuse. Congress has thought that a people like the Filipinos or the Porto Ricans, trained to a complete judicial system which knows no juries, living in compact and ancient communities, with definitely formed customs and political conceptions, should be permitted themselves to determine how far they wish to adopt this institution of Anglo-Saxon origin, and when. Hence the care with which from the time when Mr. McKinley wrote his historic letter to Mr. Root in April of 1900, Public Laws, Philippine Commission, pp. 6–9—Act of July 1, 1902, c. 1369, 32 Stat. 691, 692, concerning the character of government to be set up for the Philippines by the Philippine Commission, until the Act

of 1917, giving a new Organic Act to Porto Rico, the United States has been liberal in granting to the Islands acquired by the Treaty of Paris most of the American constitutional guaranties, but has been sedulous to avoid forcing a jury system on a Spanish and civil-law country until it desired it. We can not find any intention to depart from this policy in making Porto Ricans American citizens, explained as this is by the desire to put them as individuals on an exact equality with citizens from the American homeland, to secure them more certain protection against the world, and to give them an opportunity, should they desire, to move into the United States proper and there without naturalization to enjoy all political and other rights.

We need not dwell on another consideration which requires us not lightly to infer, from acts thus easily explained on other grounds, an intention to incorporate in the Union these distant ocean communities of a different origin and language from those of our continental people. Incorporation has always been a step, and an important one, leading to statehood. Without, in the slightest degree, intimating an opinion as to the wisdom of such a policy, for that is not our province, it is reasonable to assume that when such a step is taken it will be begun and taken by Congress deliberately and with a clear declaration of purpose, and not left a matter of mere inference or construction.

Counsel for the plaintiff in error also rely on the organization of a United States District Court in Porto Rico, on the allowance of review of the Porto Rican Supreme Court in cases when the Constitution of the United States is involved, on the statutory permission that Porto Rican youth can attend West Point and Annapolis Academies, on the authorized sale of United States stamps in the Island, on the extension of revenue, navigation, immigra-

tion, national banking, bankruptcy, federal employers' liability, safety appliance, extradition, and census laws in one way or another to Porto Rico. With the background of the considerations already stated, none of these nor all of them put together furnish ground for the conclusion pressed on us.

The United States District Court is not a true United States court established under Article III of the Constitution to administer the judicial power of the United States therein conveyed. It is created by virtue of the sovereign congressional faculty, granted under Article IV, § 3, of that instrument, of making all needful rules and regulations respecting the territory belonging to the United States. The resemblance of its jurisdiction to that of true United States courts in offering an opportunity to nonresidents of resorting to a tribunal not subject to local influence, does not change its character as a mere territorial court. Nor does the legislative recognition that federal constitutional questions may arise in litigation in Porto Rico have any weight in this discussion. The Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that government is exerted. This has not only been admitted but emphasized by this court in all its authoritative expressions upon the issues arising in the *Insular Cases*, especially in the *Downes* v. *Bidwell* and the *Dorr Cases*. The Constitution, however, contains grants of power and limitations which in the nature of things are not always and everywhere applicable, and the real issue in the *Insular Cases* was not whether the Constitution extended to the Philippines or Porto Rico when we went there, but which of its provisions were applicable by way of limitation upon the exercise of executive and legislative power in dealing with new conditions and requirements. The guaranties of certain fundamental personal rights declared in the Constitution, as for in-

stance that no person could be deprived of life, liberty or property without due process of law, had from the beginning full application in the Philippines and Porto Rico, and, as this guaranty is one of the most fruitful in causing litigation in our own country, provision was naturally made for similar controversy in Porto Rico. Indeed provision is made for the consideration of constitutional questions coming on appeal and writ of error from the Supreme Court of the Philippines, which are certainly not incorporated in the Union. Judicial Code, § 248.

On the whole, therefore, we find no features in the Organic Act of Porto Rico of 1917 from which we can infer the purpose of Congress to incorporate Porto Rico into the United States with the consequences which would follow.

This court has passed on substantially the same questions presented here in two cases, *Porto Rico* v. *Tapia*, and *Porto Rico* v. *Muratti*, 245 U. S. 639. In the former, the question was whether one who was charged with committing a felonious homicide some twelve days after the passage of the Organic Act in 1917, could be brought to trial without an indictment of a grand jury as required by the Fifth Amendment to the Constitution. The United States District Court of Porto Rico on a writ of habeas corpus held that he could not be held to answer and discharged him. In the other case, the felony charged was alleged to have been committed before the passage of the Organic Act, but prosecution was begun afterwards. In that, the Supreme Court of Porto Rico held that an indictment was rendered necessary by the Organic Act. This court reversed the District Court in the *Tapia Case* and the Supreme Court in the *Muratti Case*, necessarily holding the Organic Act had not incorporated Porto Rico into the United States. These cases were disposed of by a *per curiam*. Counsel have urged us in the cases

at the bar to deal with the questions raised more at length in exposition of the effect of the Organic Act of 1917 upon the issue, and we have done so.

A second assignment of error is based on the claim that the alleged libels here did not pass the bounds of legitimate comment on the conduct of the Governor of the Island against whom they were directed, and that their prosecution is a violation of the First Amendment to the Constitution securing free speech and a free press. A reading of the two articles removes the slightest doubt that they go far beyond the "exuberant expressions of meridional speech," to use the expression of this court in a similar case in *Gandia* v. *Pettingill*, 222 U. S. 452, 458. Indeed they are so excessive and outrageous in their character that they suggest the query whether their superlative vilification has not overleapt itself and become unconsciously humorous. But this is not a defence.

The judgments of the Supreme Court of Porto Rico are *Affirmed.*

Mr. Justice HOLMES concurs in the result.